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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 MARK NUÑEZ, *et al.*

4 Plaintiffs,

5 v.

11 Civ. 5845 (LTS)

6 CITY OF NEW YORK, *et al.*

7 Defendants.

8 -----x Conference

9 New York, N.Y.
April 27, 2023
10 2:00 p.m.

11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 Chief Judge

14

15 APPEARANCES

16
17 EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
18 Attorneys for Plaintiff Class
19 BY: JONATHAN S. ABADY
DEBRA L. GREENBERGER

20 -and-

21 THE LEGAL AID SOCIETY PRISONERS' RIGHTS PROJECT
22 BY: MARY LYNNE WERLWAS
KAYLA SIMPSON
KATHERINE HAAS

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1 APPEARANCES (continued)
23 HON. SYLVIA O. HINDS-RADIX
4 Corporation Counsel of the City of New York
5 New York City Law Department
6 Attorney for Defendants
7 BY: ALAN H. SCHEINER
8 Assistants Corporation Counsel9 DAMIAN WILLIAMS
10 United States Attorney for the
11 Southern District of New York
12 Attorney for Intervenor Plaintiff
13 United States of America
14 BY: JEFFREY K. POWELL
15 LARA K. ESHKENAZI
16 Assistant United States Attorneys17 OFFICE OF THE MONITOR
18 Nuñez, et al. v. City of New York, et al.
19 BY: STEVE J. MARTIN, Monitor20 - and -
21 EIXGER, LLP
22 Attorneys for Monitor Steve J. Martin
23 BY: ANNA E. FRIEDBERG, Deputy Monitor24 Also Present:
25Commissioner Louis Molina
New York City Department of Correction

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1 (Case called)

2 THE COURT: Good morning. We are here today for an
3 emergency status conference. Today's conference was scheduled
4 at the request of the monitoring team and plaintiffs' counsel
5 in light of the monitoring team's May 26, 2023 special report
6 regarding five recent incidents that have raised serious
7 concerns about the city's and the department's ability to
8 accurately and timely report serious injuries, to safely manage
9 the individuals in its custody, and to provide the monitoring
10 team with timely and accurate information.

11 These disturbing incidents, which involve serious
12 injuries and unexplained neglect of supervision, and the
13 apparent lack of proactive reporting and cooperation in
14 following up by the monitoring team, suggest that the
15 atmosphere of commitment to progress and candor with respect to
16 safety issues on which the Court's support of recent
17 undertakings by the defendants has been premised may have
18 broken down.

19 The monitoring team has since filed supplemental
20 reports and the city and the department have made related
21 statements to the news media.

22 I will first ask that today's participants state their
23 appearances, beginning with the monitor and the representative
24 of the monitoring team.

25 MR. MARTIN: Good morning, your Honor. This is Steve

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1 Martin, the court monitor.

2 THE COURT: Good morning, Mr. Martin.

3 MS. FRIEDBERG: Good morning, your Honor. This is
4 Anna Friedberg. I am the deputy monitor.

5 THE COURT: Good morning, Ms. Friedberg.

6 And now counsel for the plaintiffs.

7 MS. WERLWAS: Good morning, your Honor. Mary Lynne
8 Werlwash, from the Legal Aid Society Prisoners Rights Project,
9 for the plaintiffs' class.

10 THE COURT: Good morning, Ms. Werlwash. And will any
11 of your colleagues be speaking today?

12 MS. WERLWAS: They may, your Honor, and so they are on
13 the audio line and can make their appearances through the audio
14 line.

15 THE COURT: All right. So if they wish to speak
16 through the audio line -- actually, let's have them state their
17 appearances so that the court reporter can hear their voices.

18 So, Ms. Simpson, are you on the phone line?

19 MS. SIMPSON: Yes, your Honor. Kayla Simpson, The
20 Legal Aid Society Prisoners Rights Project. Good morning.

21 THE COURT: Good morning.

22 And Ms. Haas.

23 MS. HAAS: Yes. This is Katherine Haas from the
24 Prisoners Rights Project.

25 THE COURT: Good morning.

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1 Is anyone else representative of the plaintiff class
2 on the phone line and intending to speak?

3 MS. GREENBERGER: Good morning, your Honor. This is
4 Debra Greenberger, Emery Celli Brinckerhoff Abady Ward &
5 Maazel, for the plaintiff class.

6 THE COURT: Good morning, Ms. Greenberger. And did
7 you say Mr. Abady is on, as well?

8 MR. ABADY: Yes, your Honor. Jonathan Abady, Emery
9 Celli Brinckerhoff Abady Ward & Maazel, also on the line, your
10 Honor.

11 THE COURT: Good morning, Mr. Abady.

12 For the intervenor plaintiffs, U.S. Attorney's Office
13 for the Southern District of New York, who is on?

14 MR. POWELL: Jeffrey Powell, with the U.S. Attorney's
15 office, for the government, your Honor.

16 THE COURT: Good morning, Mr. Powell.

17 And is any of your colleagues on the phone line and
18 intending to speak?

19 MR. POWELL: Ms. Eshkenazi is on, is participating
20 here as well.

21 THE COURT: Good morning. Ms. Eshkenazi, would you
22 please just state your appearance so that the reporter can hear
23 your voice.

24 MS. ESHKENAZI: Yes, good morning. Lara Eshkenazi for
25 the government.

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1 THE COURT: Good morning, Ms. Eshkenazi.

2 And counsel for the defendants.

3 MR. SCHEINER: Good morning, your Honor. This is Alan
4 Scheiner, from the Corporation Counsel's Office of the City of
5 New York, for the city and the Department of Correction.

6 THE COURT: Good morning, Mr. Scheiner.

7 And Commissioner Molina, are you here?

8 COMMISSIONER MOLINA: Yes, I am, your Honor. Good
9 morning. Louis Molina, Commissioner, New York City Department
10 of Corrections.

11 THE COURT: Good morning, Mr. Commissioner.

12 I greet the members of the public and press who are
13 listening in on the phone line that was provided and I thank
14 them for attending in that way. And participants who are not
15 on camera who have just dialed in, please mute your phones
16 unless you are requesting to speak, and I would ask that
17 counsel and the commissioner, who are on camera, mute their
18 phones when they are not speaking.

19 If you are listening on the dial-in line, please don't
20 hang up and try to dial back in if we take a break. You can
21 put your phone on hold if you need to take a break or we call a
22 break.

23 And I remind everyone participating or listening in
24 any way that, as provided in the Court's January 19, 2021
25 standing order, neither recording, photography, nor any

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1 retransmission of any part of this proceeding is permitted.

2 I will be calling on each speaker during the
3 proceeding. Each time that you speak, please identify yourself
4 by name for clarity of the record and for the benefit of those
5 who have audio access only. Please don't interrupt each other
6 or me during the hearing. If we interrupt each other, it is
7 difficult to create an accurate transcript. But having said
8 that and, as usual, I apologize in advance for breaking this
9 rule because I may interrupt if I have questions.

10 If anyone has difficulty hearing me or another
11 participant, please unmute and indicate that promptly. And it
12 is important that anyone who speaks always answer any questions
13 with words rather than by sounds, nodding, or gestures, because
14 even though I can see many of you, the people who are listening
15 in can't see you and the court reporter needs to be able to
16 make an accurate transcript of what's being said.

17 As I noted a moment ago, today's emergency status
18 conference was scheduled as requested by the monitoring team
19 and plaintiffs' counsel because the monitoring team's May 26,
20 2023, June 8, 2023 special reports and June 12, 2023 letter, as
21 well as media reports of remarks by the mayor of the city of
22 New York and the commissioner of the Department of Corrections
23 raised profound questions as to whether the city and the
24 department are capable of making the facilities' management
25 changes that are necessary to protect detainees and staff

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1 properly, have the requisite objectivity and transparency
2 necessary to address serious incidents reliably, and advance
3 the Court-ordered reforms, and are willing to engage in
4 effective collaboration with the monitoring team.

5 It is disappointing that the current state of affairs
6 has necessitated an emergency status conference just one day
7 before the anniversary of the action plan which was entered on
8 June 14, 2022. That action plan identified key areas of reform
9 for the department to prioritize in light of the foundational
10 impediments to implementing each requirement of the consent
11 judgment.

12 The recent reports suggest that progress on these
13 court-ordered reforms have stalled and that communication
14 channels between the monitoring team and the department have
15 broken down, and it is my intention and hope to explore these
16 issues and take appropriate steps to get things on an
17 appropriate track this morning.

18 I would first like to ask counsel for the city about a
19 proposed protective order that was filed sometime after 9:00
20 last night dealing with the provision of information to
21 plaintiffs' counsel.

22 Mr. Scheiner, I have read your letter and the proposed
23 order. Is this something that's on consent?

24 MR. SCHEINER: Good morning, your Honor. This is Alan
25 Scheiner.

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1 Yes. It is submitted upon consent. All counsel agree
2 to enter that order as an interim order, as it states.

3 THE COURT: Very well, then. I will enter the order.
4 And it provides for further meeting and conferring and
5 attention by the Court, if necessary. So I will enter that
6 order in connection with today's proceeding.

7 So I would now like to begin things by asking the
8 monitor to give a short status report on the disclosures and
9 investigations and remedial steps of which the monitoring team
10 is aware with respect to the incidents that were described in
11 the report.

12 MR. MARTIN: Good morning, your Honor, counsel,
13 commissioner.

14 I would like to begin my remarks today by emphasizing
15 that the current state of affairs in the jails remains
16 alarming, not just for the serious levels of ongoing violence
17 and frequency in which force is used, but also because of the
18 regression in the department's management in the *Nuñez* court
19 orders and its lack of transparency.

20 The monitor's role is to be an independent, neutral,
21 and objective party which monitors, assesses, and reports on
22 the department's progress in complying with the *Nuñez* court
23 orders. We have done so for eight years. We have reported the
24 department's progress; likewise, we have reported its failures
25 and regressions. We are here today to report on the latter

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1 with respect to three key issues:

2 1. Five illustrative incidents in which persons in
3 custody sustained serious injuries and/or died:

4 2. Concerns about the department's management for the
5 *Nuñez* court orders; and

6 3. A concerning trend emerged wherein the department
7 is no longer acting in a transparent manner and has begun to
8 engage in what I can only characterize as an obstructive manner
9 that is negatively impacting the monitor team's ability to
10 fulfill its obligations to the Court and the parties.

11 I would like to offer a brief outline of how we got to
12 today's hearing.

13 In mid May, my team began to learn about a number of
14 concerning incidents and raised them with various department
15 officials. On May 24, my office submitted an official letter
16 of notification advising the commissioner and corporate counsel
17 of our concerns about these three disturbing incidents
18 involving in-custody deaths and serious injuries and the DOC's
19 failure to notify the monitor's office.

20 Within hours of the submission of this letter, the
21 monitoring team learned of a few additional disturbing
22 incidents. The commissioner, in a letter dated May 26,
23 provided a response that further heightened our level of
24 concern as it appeared to reflect a limited appreciation of the
25 gravity of these cases and also advised us, among other things,

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1 there was no requirement to report deaths in custody to the
2 monitor's office. He further advised us that we were not
3 entitled to briefings about ongoing investigations. Finally,
4 he expressly discouraged the monitor's office from filing a
5 report to the Court and the parties on these matters because it
6 would cause "great harm" to the department and "fuel the flames
7 of those who do not believe the department can govern
8 ourselves."

9 This troubling lack of transparency is further
10 compounded by the fact that the Court specifically instructed
11 my office to immediately file reports with the Court if exigent
12 circumstances present themselves or if the defendants failed to
13 remain adequately engaged with the monitoring team.

14 Between May 26 and June 12, the monitoring team
15 submitted two reports and two letters to the Court outlining
16 five serious incidents that occurred over a nine-day period in
17 May, as well as a summary of the overall deterioration of the
18 department's efforts to manage the *Nuñez* court orders and the
19 lack of transparency. These reports include detailed
20 information about these incidents to the extent available to
21 the monitoring team.

22 The commissioner and the mayor have each made claims
23 in the media which adamantly deny any wrongdoing by the
24 department or its staff with regard to these incidents. How
25 such claims are to be given any credence -- how are such claims

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1 to be given any credence when the department itself, that it
2 reported in a single incident, that is, incident number one, at
3 least five officers had already been charged with misconduct
4 ranging from improper escort to failing to secure a gate to
5 various failures to report. Furthermore, the investigations
6 remain active in these cases so additional questions remain
7 unresolved.

8 Each incident on its own is disturbing and that the
9 five incidents occurred just over a nine-day period is
10 extremely troubling. And unfortunately the problems
11 illuminated by these events are not new, are emerging. They
12 characterize the variety of failures that gave rise to the
13 consent judgment and have since continued unabated. More
14 specifically, they reflect:

15 1. Serious injuries resulting in the death of two
16 incarcerated individuals, life-altering injuries for two
17 incarcerated individuals, and one individual remains in
18 critical care;

19 2. Serious security breaches and operational
20 failures;

21 3. Failures by staff to adequately report;

22 4. Concerns about the management of intake;

23 5. Questionable and premature specific assertions of
24 individual cases;

25 6. The department's sharing of information regarding

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1 these incidents from the time they occurred until the present
2 has raised serious concerns about its transparency and efforts
3 to proactively manage these matters.

4 With respect to the specific details of each incident,
5 the status investigations and remedial efforts, I will defer to
6 our extensive reporting in our submissions on May 26, May 31,
7 June 8, and yesterday, June 12.

8 Following the submission of the agenda, the plaintiffs
9 requested of the monitor that they be given an opportunity to
10 address questions regarding these five incidents. I defer to
11 the Court on how it would like to proceed in view of that
12 request.

13 Thank you, your Honor.

14 THE COURT: Thank you.

15 We will go through the agenda as set. Mr. Martin, at
16 this point, do you believe that it is -- you have viewed the
17 questions. I haven't seen them. Do you believe that any of
18 them is necessary to cover an area that the monitor's report or
19 remarks or the plaintiffs' remarks would not raise sufficiently
20 or appropriately?

21 MR. MARTIN: I don't believe so, your Honor.

22 THE COURT: All right. Then let's proceed with the
23 agenda as previously proposed.

24 So I will turn now to the deputy monitor to introduce
25 further remarks regarding disclosure and communications issues

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1 with respect to the orders that are in place.

2 MS. FRIEDBERG: Good morning, your Honor. As
3 Mr. Martin -- oh, good morning, your Honor. This is Anna
4 Friedberg. I am the deputy monitor of the *Nuñez* consent
5 orders.

6 THE COURT: Good morning.

7 MS. FRIEDBERG: The monitoring team has provided a
8 detailed summary of our concerns regarding the regression in
9 the department's management of the *Nuñez* court orders and its
10 lack of transparency. These concerns continue to grow each
11 day, as demonstrated by the need for the monitoring team to
12 update the Court just yesterday, only four days after our June
13 8 report, with additional issues that call into question the
14 veracity of information provided and the lack of transparency.
15 The monitoring team simply cannot operate under these
16 conditions and fulfill its responsibilities under the *Nuñez*
17 court orders to provide the Court and the parties timely,
18 accurate, and reliable information.

19 The monitoring team feels strongly that these issues
20 must be addressed immediately to ensure that there is no
21 further regression and to maintain the integrity of our work.
22 We appreciate that the proposed next steps will be discussed a
23 little later in this conference and we will address those items
24 at that time.

25 Accordingly, we defer to the Court and the parties to

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1 address those issues related to the defendants' compliance with
2 disclosure and communication requirements under the consent
3 decree, remedial orders, and action plan.

4 THE COURT: And so the specifics of those compliance
5 issues you believe are sufficiently set out in the extensive
6 reports that you have filed which also include a proposed order
7 which you intend to address in the next steps segment of the
8 conference. Is that correct, Ms. Friedberg?

9 MS. FRIEDBERG: Correct, your Honor.

10 THE COURT: All right. And so at this point you have
11 completed your remarks for this segment, is that correct?

12 MS. FRIEDBERG: Correct.

13 THE COURT: Thank you.

14 And so I will turn now to counsel for the plaintiff
15 class. And just for those who are watching on the screens, you
16 may see me turning my head to the side. That's no disrespect
17 for you. I am looking at the monitor that is to the side.

18 So Ms. Werlwas.

19 MS. WERLWAS: Good morning, your Honor, and thank you
20 very much for calling this conference today. We know you will
21 appreciate the gravity of the harm that brings us here today.

22 We appreciate you also starting with this topic of the
23 disclosure and communication requirements, because this entire
24 remedial process is built on reliable information and
25 good-faith engagement from the city. The lack of accurate

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1 information renders this entire process unworkable. If the
2 commissioner says, for example, that staff were removed from
3 the emergency services unit but they weren't or if the city
4 says in court that the number of awarded posts can be reduced
5 without labor law barriers and that is not true, then we are
6 all at an impasse in moving forward.

7 This process cannot work when we cannot trust in
8 court, in filings, or in meet-and-confers fundamental elements
9 of what the city is saying.

10 As a threshold matter, I want to note that we, the
11 plaintiffs' counsel, are at a disadvantage here in that we have
12 not received the materials that were given to the monitor and
13 the press about the five incidents. They are being delivered
14 to our office today, but we just want to make clear that our
15 remarks about those incidents are based upon the information
16 that has been provided in the monitor's reports and not in an
17 independent review of any videos or materials.

18 The problem we face here is that these difficulties
19 with obfuscation and disclosure are not an isolated problem.
20 There is a record in the monitor's reports and before the Court
21 of concerns with this administration stretching back to the
22 March 16, 2022 report. The monitor says that these same
23 concerns reemerged towards the end of 2022 and clearly not only
24 continue but have gotten worse.

25 This is grave because it's not merely a failure to

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1 disclose or affirmatively communicate although those issues are
2 of course important. What we wish to just point out are our
3 serious concerns about the outright misrepresentations of
4 material facts to the Court and to the parties. These failures
5 of disclosure, overt lies and lies of omission, materially
6 impact the compliance issues that have been addressed in the
7 Court conferences.

8 I will draw attention to simply two such categories.

9 The first are the misrepresentations regarding intake.
10 As the Court is more than aware, the issues and policies
11 governing intake have been the subject of immense focus over
12 the past several months—litigation of a contempt motion.

13 The department has repeatedly reassured the Court that
14 it intends to track all individuals who pass through internal
15 facility intake areas as the second remedial order requires.

16 In a January 10, 2023 status report, defendants
17 clearly stated that it was tracking all such persons. In an
18 April 17 sworn declaration, ECF 519, a senior member of
19 department staff admitted that they were not scanning yet, but
20 seemingly reiterated the department's goal that it would scan
21 every person in intake and stated that the IT team was
22 developing information to track all—emphasis
23 added—inter-facility transfers.

24 And in another sworn declaration on May 17, ECF 532,
25 the department stated that it was making efforts to ensure all

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1 individuals in inter-facility intra-intake were tracked and
2 that they would receive the main booking case number of each
3 individual in each intake.

4 The monitor's June 8 report now tells us that this
5 information was not accurate as the department has in fact
6 decided it does not need to track everyone in inter-facility
7 intake and instead takes the position, according to the
8 monitor's report, that certain individuals in intake are not
9 being tracked because their placement in intake is not a *Nuñez*
10 issue.

11 Relatedly to intake, in a sworn declaration submitted
12 by senior department staff on April 17, defendants stated, and
13 I quote, "Procedures for new admissions have not changed since
14 March 20, '23."

15 In another sworn declaration on May 17, this was
16 reiterated, that procedures for new admission have not changed.
17 We now know, according to the monitor's reports, those
18 statements were not accurate. According to the monitor, the
19 department promulgated a revised new admissions policy on April
20 10, 2023. The monitoring team's requested to the department of
21 how this occurred is still pending.

22 For the Court and the parties to have such fundamental
23 doubts about the veracity of information reported about these
24 obligations in the case, given all of the effort that has been
25 extended on this issue alone, is a mockery of this judicial

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1 process.

2 In addition and more briefly, we will point to the
3 issues about representations regarding the emergency services
4 unit. The defendants' April 25 letter to this Court of this
5 year addressed the removal of individuals from the emergency
6 services unit who were, according to the monitor, unfit for
7 service. We were told that 28 people were removed from the ESU
8 and learned through the monitor that at least five of those
9 individuals remained assigned to these emergency response
10 teams.

11 These are simply a few of the representations
12 addressed in court. The monitor -- we will not restate here
13 what the monitor has put forth in the monitor's reports about
14 various misrepresentations or obfuscations in reports made to
15 the monitor and more recapitulating the similar experiences in
16 meet-and-confer sessions about topics that were -- the Court
17 had asked the parties to confer about.

18 More globally, we also will not recapitulate the
19 monitor's reports about the tremendous barriers to the
20 monitor's access to information needed to evaluate compliance.
21 Those do leave us, however, with questions that, as the monitor
22 noted, we do think it critical for the city to address today.

23 We would ask the city to address questions about what
24 corrective action has been taken as of today in the multiple
25 incidents in the monitor's reports. We understand that there

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1 may be more action at some later point after investigations,
2 but we still do not know what has happened to date.

3 As one particular example -- we do know some of this.
4 For the first incident, incident one, in which an individual is
5 paralyzed after a probe team slammed his head into a cement
6 floor while he was rear-cuffed in restraints last month, we do
7 know, as the monitor referenced in his opening remarks, that
8 some corrective action has been taken for officers in the
9 initial security breaches that took place before this
10 individual was brought to the intake area, but has there been
11 any action taken for those probe team officers who -- in the
12 search pen whose actions apparently paralyzed this man? Have
13 there been suspensions, removals from the probe team, placement
14 on a different desk while the incident is being investigated?
15 We don't know.

16 The same question obtains for officers who saw and
17 spoke with the person in the third incident, a person who was
18 naked, in a pen, in obvious distress for hours, who we now know
19 had fractured ribs and a ruptured spleen. Has any action been
20 taken to date for those officers who saw this individual and
21 took no action? And if not, why not? Pending investigations
22 do not rob the commissioner of immediate corrective tools.

23 A second category of questions that we believe should
24 be clarified today is whether the commissioner stands by his
25 assertions of no staff wrongdoing. When the commissioner and

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1 mayor showed videos of incidents one and two to members of the
2 press—videos we have not seen—one media outfit reported that
3 the commissioner "adamantly denied his officers committed any
4 wrongdoing and that force was necessary and there was no
5 inappropriate conduct." The monitor says that these reported
6 conclusions for the first incident, which resulted in the man
7 being paralyzed, appear inconsistent with the available
8 objective evidence, but also suggest an attempt to excuse or
9 avoid responsibility for a serious event.

10 We cannot of course attest to the accuracy of
11 reporting, but we think it is critical to know. Is it still
12 the commissioner's conclusion that there was no excessive or
13 unnecessary force for this incident, that, as he said to CBS-2,
14 that it showed restraint and empathy?

15 Similarly, for the second incident involving a death
16 by suicide, we ask the Court to ascertain if it is still the
17 commissioner's view that, quote, there was no departmental
18 wrongdoing even though we are told from the monitor that the
19 video contradicts his assertion that there were two officers in
20 that unit and the monitor reports the video showing inadequate
21 supervision.

22 There are a long host of unanswered questions—and we
23 could go on, but we will not, given the time today—that the
24 department can answer right now and should answer right now.
25 But more globally, where we are is that this remedial scheme,

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1 and the one particularly in this case, is unusually tethered to
2 the monitor's access to information. The monitor cannot,
3 however, verify data on every point. The Court and the parties
4 rely on the city to provide full, accurate, and factual
5 information, and what we have seen is that this has not taken
6 place about issues material to this Court's decision, and this
7 trustee's process is broken. It was not broken just this past
8 month, nor with the astonishing statements, such as the
9 department blaming preexisting injuries for paralysis or
10 dismissing a skull fracture as a heart attack.

11 We stood in this courtroom just about six weeks ago,
12 well, the virtual courtroom, and submitted papers and discussed
13 with great particularity these issues about which there is now
14 backtracking, retrenchment, and doubt, and we cannot have court
15 processes that are so meaningless. That is not a path to
16 justice or relief.

17 I will -- certainly we support the entry of the
18 monitor's proposed order about disclosure to the monitoring
19 team. It is necessary for the reasons that the monitor
20 describes. But more orders about patently clear obligations to
21 cooperate will not fix these. This is a structural problem and
22 how to address this particular illegal conduct in this city and
23 the outcomes show that the process has not worked.

24 The conduct that is described in the monitor's reports
25 clearly demonstrates contempt of this Court, and the Court

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would be fully within its bounds to hold the city in contempt on the paper record before it. But as we note, the court orders alone will not and cannot, we believe, resolve a structural problem. The monitor cannot be all places at once. The monitor and parties cannot verify every important factual assertion the city makes. The monitors do not have the power to implement its recommendations, and the record for years is replete with the city failing to act on monitor recommendations or doing so only at a glacial pace. That extraordinary expenditure of resources is simply unsustainable and, as a result, because relief in this case has tethered to a process that we all hoped would work but that has not, thousands of lives are in serious jeopardy every day that the status quo continues.

In the later part of the agenda, we will discuss the next steps that we think are necessary to gain relief for the plaintiff class, given not only these most recent revelations but this entire history that has shown that this process, one that we negotiated and stood by as well, that the city agreed to has not worked.

I will halt there unless the Court has questions.

THE COURT: Thank you, Ms. Werlwash. We will of course return to next steps questions.

At this point I will call on counsel for the government to speak. Mr. Powell.

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1 MR. POWELL: Thank you, your Honor. It is Jeffrey
2 Powell for the government.

3 I am going to keep my comments fairly brief because we
4 are anxious to hear from the city, and I'm going to just
5 address the issue of the disclosure or not disclosure of
6 information.

7 Briefly, prior to the Court's approval of the action
8 plan, Commissioner Molina appeared before your Honor back in
9 April 2022 and stated that he and the monitor were "aligned"
10 and that he was committed to working with Mr. Martin and his
11 team to implement the changes necessary to truly reform this
12 deeply troubled agency.

13 The monitor of course now contends that the department
14 is failing to timely provide him and his team the complete,
15 accurate, and reliable information which he needs and must have
16 to adequately fulfill his assessment and reporting obligations
17 and your Honor's multiple orders in this case.

18 Instead of partnering and collaborating with the
19 monitor and his expert team, as the commissioner represented
20 the department would do more than a year ago, the commissioner
21 and current department leadership are reportedly failing to
22 consent with him on key areas related to the consent judgment
23 and failing to respond to requests for information.

24 As your Honor pointed out and as plaintiffs' counsel
25 have pointed out, this of course undermines the entire

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1 structure of court oversight established by the consent
2 judgment, since it is the monitor, as an agent of the Court,
3 who is responsible for providing both the parties and the Court
4 with his objective assessment of the department's efforts to
5 comply with the Court-ordered relief. It simply cannot
6 continue.

7 We respectfully request that the Court enter the
8 proposed order attached to the monitor's June 12 report as
9 submitted by the monitor. It is deeply disturbing that almost
10 eight years after the consent judgment was entered in this case
11 the monitor feels that he must resort to seeking a court order
12 to ensure that he receives timely and accurate information from
13 the department, including basic information about persons who
14 have died in custody or who have sustained serious injuries
15 while in custody.

16 If your Honor wishes, we can address the three
17 suggested changes that the city offered to make to the proposed
18 order which we oppose.

19 Finally, to date, the city has not submitted any
20 response to the Court addressing the monitor's multiple
21 submissions of the last couple of weeks detailing his clear
22 exasperation with the department's recent conduct.

23 In his June 8 report, the monitor provides numerous
24 examples of what he describes as "the department's lack of
25 transparency and failures to accurately manage compliance with

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1 the Nuñez court orders and timely respond to the monitoring
2 team's feedback and requests for information." We look forward
3 to now hearing the city's report to the monitor's very serious
4 concern.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Powell.

7 We will speak about the specific objections or any
8 other controversies with respect to the proposed order when we
9 get to proposed next steps, but at this point I will call on
10 the city's counsel and the commissioner to respond.

11 MR. SCHEINER: Good morning, your Honor. I am Alan
12 Scheiner, senior counsel at the New York City Law Department,
13 representing the city of New York and New York City Department
14 of Correction.

15 THE COURT: Good morning.

16 MR. SCHEINER: And here with me -- good morning. Here
17 with me, as you know, is Commissioner Molina. And --

18 THE COURT: Good morning.

19 MR. SCHEINER: -- with the proposed -- the agenda
20 proposed by the monitor, at the moment I will restrict my
21 remarks to the subject of defendants' compliance with
22 disclosure requirements and other mandates of the Court's
23 orders with respect to communication with the monitor.

24 The city acknowledges that in some instances cited by
25 the monitor reporting our consultation that was required did

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1 not occur, and those were errors. We believe that the order
2 proposed by the monitor, with some minor revisions that the
3 city is requesting, will avoid such errors in the future.

4 The demands of reporting to the monitor are
5 substantial. It has been difficult for the department to fully
6 meet those needs with existing staff in recent months. The
7 Nuñez manager, who is already appointed, who we understand is
8 acceptable to the monitor, has years of experience with Nuñez
9 requirements, including in appearances before your Honor.

10 The monitor says that reporting on five recent events
11 was absent or, when made, incomplete or incorrect, and the city
12 takes very seriously its obligations under the Constitution to
13 protect that health and safety of those in its custody and to
14 provide information to the monitor as required by the Court's
15 orders. The department reports on a routine basis about uses
16 of force, PIC—or person in custody—fights, staffing, and many
17 other matters, and the monitor received additional information
18 about specific incidents or personnel matters when requested.
19 Dozens of communications occur on a typical day between
20 department staff and the monitoring team, and routine data
21 flows appear from the monitor's report to be working as
22 intended. The department has responded to thousands of formal
23 requests for information or feedback from the monitor.

24 The five recent events giving rise to the monitor's
25 recent filings occurred coincidentally around the same time in

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1 a two-week period, but each concerned very different
2 circumstances with very different causes which in some cases
3 remain unknown to the city until further medical analysis. In
4 fact, these matters present no pattern either in lack of
5 communication or in the conditions at the department's
6 facilities. Attempting to draw conclusions on the sole basis
7 of the recency of a handful of events is a logical fallacy.
8 Investigation is certainly appropriate, but conclusions about
9 trends or systems made solely on the basis of this coincidence
10 in time would be incorrect.

11 The communication problems identified by the monitor
12 do not represent a breakdown in the city's willingness to be
13 responsive to the needs of the monitorship. Rather, they arose
14 from other factors.

15 First, there was ambiguity about what the monitor
16 expects to be reported on an urgent basis rather than in
17 routine reports. As the monitor acknowledges, most of the
18 recent events were not required by any orders or requests of
19 the monitor to be reported immediately. The proposed order,
20 with the city's minor changes, solves that problem by making
21 the urgent recording requirements explicit and the city
22 welcomes the clarity.

23 The second factor contributing to the communication
24 problems has been the perceived need to respond quickly to the
25 monitor, and in some instances information was provided based

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1 on secondhand reports and it turned out to be incorrect. The
2 city shares the monitor's goal of timely, accurate, and
3 complete information.

4 But no recording system is perfect, and inevitably are
5 tradeoffs between each of those goals. Quicker information is
6 inevitably less accurate and more complete information may
7 contain elements that are less reliable than others.
8 Reasonable people may differ on what they consider timely where
9 investigation or verification of data is required.

10 All of the five events involve medical questions. The
11 department has no direct access to the medical information of
12 persons in custody. It knows only what it is told by the
13 correctional health service which is under the aegis of the
14 Health and Hospitals Corporation which is not part of the city
15 government.

16 Even less is known by the department about events
17 during hospitalizations. This presents inherent risk of error
18 if the department is asked why someone went to the hospital or
19 why they died or got sick.

20 With the appointment of a Nuñez manager, the
21 department will exercise greater caution in reporting on
22 emergent matters. It will be one person with access to the
23 information available to the department so that they can report
24 more reliably and completely or make clear when reliable
25 reporting is simply not possible because of the absence of

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1 information.

2 The monitor has alleged the city engaged in
3 misrepresentations to the monitor and the Court. Absolutely no
4 intentional misrepresentations have been made by the city.
5 Some of the alleged misrepresentations arise from the monitor's
6 interpretation of specific order words, for example, the term
7 "on the floor" which the monitor has referred to more than
8 once, as a misrepresentation. Meetings for the department is
9 in the housing unit where the event occurred, and the phrase
10 was used correctly in reporting on that incident.

11 Second, the monitor asserts that commitments made by
12 the department and the city in the past were
13 misrepresentations. That is not so. The fact that the monitor
14 believes that expectations were not met does not mean that a
15 commitment was falsely made, and no false commitments were made
16 here. The procedures adopted in the monitor's proposed order
17 with the city's requested changes should resolve most
18 differences about whether cooperation and consultation have
19 occurred as promised.

20 Third, some purported misrepresentations are indeed
21 just errors. These are typically corrected by the department
22 itself. Some of these occur when information is rushed, as
23 noted above. Others are data errors which occur in any large
24 organization when data from different sources has to be
25 compiled. The department is taking steps to improve its data

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1 collection systems that will make its data far more reliable
2 for its own operations as well as for the monitor.

3 Of course we will answer any questions the Court may
4 have as best we can, but it's possible that given the time
5 frame of these events and the recent filings that we will have
6 to ask to respond in a later submission.

7 Thank you, your Honor.

8 THE COURT: Thank you.

9 Did the commissioner wish to say anything? I will
10 have a couple of follow-up questions for you both, I suppose.

11 COMMISSIONER MOLINA: Good morning, your Honor. I
12 will just say -- I will just add to that briefly, that there
13 have been, over the last 18 months, since this administration
14 has took over management of city's jail system, some
15 significant and sweeping change, change that did not happen in
16 2016 to 2021, given the former members had recommended them
17 back as late as 2017. Those recommendations were ignored and
18 not implemented, which sent this department on the trajectory
19 where every year from 2016 to 2021 the department performed
20 very, very poorly. So at the point of January 2022, the
21 department that we inherited was on the brink of collapse, as
22 everybody involved in this conference is well aware.

23 When we think about what existed in December of 2021
24 to January 2022 and where we are today, the department has
25 moved forward significantly. We have remade the leadership and

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1 makeup of the department with infusing talent which had been a
2 longstanding recommendation I made back in 2016 and '17, which
3 was ignored, which inserted an infusion of correctional experts
4 into the system so that we can begin not only the cultural
5 change but the introduction of best practices into the
6 department. A situation where wardens had a stranglehold by
7 civil service law in those positions with working in
8 partnership with the monitor and with the support of this
9 Court, as well as the support of the mayor of the city of New
10 York, we joined together to get that suspended so that we can
11 infuse outside talent into facility leadership positions, and
12 over time that will take significant hold.

13 As this department's detainee population increased
14 over 2022, it was the first time that the department had
15 experienced not only a decrease in incidences which was
16 approximately 14 percent in calendar year 2022, but the only
17 time that it experienced a decrease from 2016 to 2021 in where
18 the detainee population was decreasing, the use of force
19 incidences were increasing.

20 I recognize that the number of use of force incidences
21 and incidents overall are still at a high rate, but the fact
22 that we are trending in a direction where those metrics are
23 declining is something I think should give a lot of hope and
24 optimism to.

25 It wasn't that long ago, on December 13 of 2022, the

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1 monitor informed me on a phone call that it was refreshing to
2 engage with people who know what they are doing, and that
3 engagement with the DOC team has not changed. The monitor's
4 team engages with a number of members of the department—from
5 executives to mid level managers—on a day-to-day basis on a
6 whole host of issues—to provide them information, answer their
7 questions. Sometimes that information is provided verbally.
8 On over 1600 occasions its been in reports and other e-mail
9 communications over the course of this administration has been
10 over about 1600 times. So we are engaged with the monitor.

11 In addition to that, when we think about the level of
12 staffing absenteeism that existed in January of 2022 and where
13 we are at today. We have abated that issue significantly and
14 it's been about a 70 percent decrease in staff absenteeism and
15 we have staff coming back to work.

16 This department inherited a disciplinary backlog which
17 the Court is well aware of. I believe the number was over 3700
18 disciplinary cases which went unaddressed and unadjudicated for
19 misconduct, procedural violations, going back to calendar year
20 2017. This backlog, coupled with the failure of the prior
21 leadership which caused over 2000 disciplinary cases in I
22 believe 2019 to have to summarily either not be addressed
23 because the statute of limitations had expired or that, was so
24 detrimental to the department because what it did was embed
25 core operational practice in the rank and file unfortunately.

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1 And we addressed that backlog issue and I have signed off on
2 the adjudication of over 3,000 disciplinary cases and, when
3 called for, have taken action in maximizing my powers as
4 commissioner of this department.

5 So it wasn't long ago that the monitor in a report,
6 and I'm paraphrasing here, when he said that he saw a sea
7 change occur under this administration that had not occurred
8 before, I think that that's still holds true today. If I have
9 an issue where I myself professionally think I need to speak to
10 the monitor about, there is nothing stopping me from calling
11 the monitor and speaking to him directly on a number of issues.
12 I have done that over the past 16 or 18 months many, many
13 times. And if the monitor himself, as the principal overseeing
14 the monitorship on the Court's behalf, wants to speak to me
15 about an issue, I have never turned away a phone call from the
16 monitor or allowed an e-mail to go unaddressed or any other
17 communications.

18 And I have always openly supported in my executive
19 staff meetings and every time I engage with the staff that they
20 should be cooperative with whatever the monitor wants. I
21 reinforce that message. And when recommendations, creative,
22 innovative ideas are brought out by the highly talented persons
23 who we have hired over the last 18 months to work for this
24 department, if I believe even that there is even a 1 percent
25 chance that it might intersect with the work of the core

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1 mission of consistent judgment, I have encouraged my staff to
2 confer with the monitor or a member of the monitoring team.
3 That is still ongoing today.

4 Thank you, your Honor.

5 THE COURT: Thank you, Mr. Commissioner.

6 I do want to follow up on the specific questions about
7 the statements of there being no wrongdoing in connection with
8 the incidents that were highlighted in the monitor's report,
9 and I have also read the media reports and seen the CBS clip
10 regarding showing of the elevator floor level portion of the
11 encounters in incident one and the statements that were made by
12 you and the mayor regarding this being appropriate correctional
13 practice.

14 And so how do you reconcile the statement that there
15 is no wrongdoing with the fact that apparently internal charges
16 have been brought and there is, as far as I know, been nothing
17 in writing to this Court or in these media appearances that
18 address the physical banging of this person on the ground in
19 the intake area?

20 COMMISSIONER MOLINA: Thank you for your question,
21 your Honor.

22 My comments to the media were specific about the
23 isolated moments of when the officers involved specifically in
24 incident one had to engage in force to stop the attempted
25 escape of a person in custody, and that's what I was commenting

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1 about. Where there were procedural violations where, for
2 example, you talked about in the elevator, where the initial
3 escort officer that was escorting a number of persons in
4 custody failed and allowed one person in custody to stay on the
5 elevator, we took immediate action in that. And while that was
6 not aired on the press because I have no control of what the
7 final show that would be put on for the press as to their news,
8 we did share with the press that that failure exited.

9 But specifically to the use of force in the first use
10 of force encounter to stop the attempted escape preliminarily,
11 I feel that those officers showed restraint in subduing someone
12 and stopping them from escaping.

13 In the second use of force incident regarding after
14 the person in custody was body scanned, where he kneed to
15 assault one of the members of the team that was trying to put
16 on his shoes because he was in leg restraints and they brought
17 him down to the floor. Inadvertently it appears that the
18 person in custody's head may have hit a bench, may have hit
19 part of the floor. That investigation is ongoing, but
20 preliminarily the actions of those officers I think, when I
21 look at the moment of what those officers' decision-making had
22 to make in that moment, preliminarily I don't find concerning
23 as of yet, but the investigation is ongoing.

24 THE COURT: So you don't find it concerning that the
25 person was taken to the floor cuffed behind and in shackles to

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1 a concrete floor and in being taken down face first, as I
2 understand it.

3 COMMISSIONER MOLINA: I preliminarily believe that was
4 an option. You have to look at all of these incidents as
5 unique and, given what options may have been available to those
6 officers at that moment, it is for the officers during this
7 investigation and MEO 16 process to be able to convey their
8 justification for the tactics that they have used.

9 THE COURT: There is an investigation still in
10 process?

11 COMMISSIONER MOLINA: That's correct, your Honor.

12 THE COURT: And with respect to the self-harm incident
13 and what the monitor indicates the video and records show about
14 the actual locations of the officers who were in the unit at
15 the time—one being in a closed office area and the other
16 engaging with the detainees in the unit—do you believe that
17 there is no issue with respect to adequate supervision of the
18 unit at the time the self-harm incident took place?

19 COMMISSIONER MOLINA: Preliminarily, I do not. We
20 had -- you know, I used the term or phrase that we had two
21 officers on the floor meaning, as the city's counsel has
22 represented, meaning that we had two officers in the housing
23 unit. As you might be well aware, that is a designated mental
24 health unit that also has a high level of touring by clinical
25 staff of Correctional Health Services. So I have no concerns

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1 about, at least preliminarily, on the staffing of the unit
2 right now.

3 THE COURT: Is there an investigation going on of the
4 incident in which the person who had apparently been assaulted
5 was naked for three hours and apparently had some interactions
6 but not relief in those three hours in the intake unit?

7 COMMISSIONER MOLINA: Yes. That is under
8 investigation, your Honor.

9 THE COURT: And the incident regarding the elderly
10 person who was ultimately compassionately released who had been
11 back-cuffed for I think it was four hours?

12 COMMISSIONER MOLINA: So that detainee has not been
13 compassionately released. There is an ongoing -- I'm sorry,
14 your Honor, there is an ongoing investigation in that incident.

15 THE COURT: And in terms of the delays in reporting
16 the deaths and the serious injuries, there is a 33-hour delay,
17 there was a 69-hour delay, there were -- there was a lack of
18 reporting to the COD which would have triggered some systemic
19 reporting. Is there a problem with that?

20 COMMISSIONER MOLINA: No. I mean, thousands of
21 notifications are made to the COD, and then we have a situation
22 like we have in this case, in these cases, where there was a
23 delay in reporting. Those are investigated so that the
24 managers of those responsible to make those notifications
25 explain themselves as to why that delay occurred and if

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1 corrective action or necessarily discipline action has to be
2 taken at the conclusion of that investigation, then we will do
3 so.

4 I think we have taken some steps regarding late
5 reporting in incident number one, if my memory serves me
6 correctly. But if there is not any justification provided to
7 us that we think merits any delay in reporting to the COD,
8 because things could happen, then we would take corrective
9 action with the staff that failed in that reporting.

10 THE COURT: And do you understand and accept that the
11 monitor has the authority and the duty under my orders to speak
12 with any member of staff and to be able to do so in confidence
13 if that's necessary?

14 COMMISSIONER MOLINA: Absolutely. I encourage all
15 staff who feel that they have any concerns to be proactive in
16 reaching out to the monitor or any oversight body, whether that
17 be the New York City Department of Investigation, the New York
18 State Attorney General's office, the New York City Board of
19 Corrections, which we have a number of staff that take that
20 opportunity to do those things. And I am very clear with the
21 staff of the responsibility that we have to be responsive to
22 the monitor when they have questions.

23 But for the sake of responding quickly, we want to --
24 I tell staff to be sure that they take the time that they need
25 to respond as accurately as possible with information they have

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1 at that moment that they are going to convey to the monitor.

2 And I tell that to my executive staff. I tell it to staff when
3 I am touring. All are welcome and all are required to
4 cooperate with the monitor. It is not an option.

5 THE COURT: Is there any reason that I should not be
6 disturbed that you commented to the monitor in your first
7 report that an emergency report regarding I think it was the
8 first two serious incidents should not be made to the Court
9 despite my instruction to the monitor that serious and exigent
10 circumstances should be reported to the Court.

11 COMMISSIONER MOLINA: Thank you for the question, your
12 Honor.

13 I think that our perception of those incidences from
14 our points of view are different. I think the monitor, if I
15 can recall correctly, in conversation with me and in our
16 discussions before this Court talked about the complexity that
17 exists in trying to reform and make sure that those reforms are
18 sustainable with the department.

19 There are other issues in the department which we are
20 contending with that are outside of the consent judgment, and
21 from time to time I share those concerns also with the monitor
22 just to try to get his point of view on them, on ideas that I
23 may have or trying to take corrective action on those areas
24 that are not even specifically related to the consent judgment.

25 And I think, as I think this Court would appreciate,

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1 when you are trying to involve an agency as large as the jail
2 system of the city of New York, one that was allowed to implode
3 from 2015 to 2021, and where the weaknesses that currently --
4 that existed in that system throughout a global pandemic to
5 include even a staffing crisis that occurred, much of which I
6 think was manufactured because of failed leadership, from my
7 point of view as commissioner, what I was trying to convey to
8 the monitor that we have to look at these things at a macro
9 level. And I did not think that these very different
10 incidences really spoke to or reached the level where there was
11 cascading or systemic harm on the persons in custody.

12 To the contrary, we have done significant work, with
13 the support of the mayor, the interagency task force, where,
14 for once, this has been an all-city proposition. I recognize
15 that incidents that are occurring today are still higher than
16 what incidents that occurred in 2016, but they are down
17 significantly from, to use the monitor's term, the apex of the
18 crisis. Fiscal year to date, slashes and stabbings are down 20
19 percent. Calendar year to date they are down 30 percent.

20 You know, we have done a lot to address idle time with
21 persons in custody. This morning we have over 20 persons in
22 custody that are graduating from high school, and that number
23 is increasing of those that we have engaged with the Department
24 of Education programs.

25 So we have done a lot to stabilize the department, and

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1 what I was trying to get the monitor to appreciate is that we
2 have a number of groups that just want to see the department
3 fail because it advances their position that Rikers Island or
4 our city's jail systems should just not exist. And I don't
5 take a position on whether Rikers should close or stay open.
6 The city council has passed a law that in August of 2027 that
7 is going to happen. But we still have a responsibility, as
8 this Court, I believe, appreciates, to stabilize the system so
9 that we can keep persons in our custody not only safe but do
10 all that we can to address the new drivers of the justice
11 involvement.

12 THE COURT: Thank you, Mr. Commissioner.

13 The monitor and deputy monitor, was there anything
14 that you wished to say further to this first topic before
15 moving on to the -- any discussion that you have of the trends?

16 MS. FRIEDBERG: Your Honor, I'm not going to take each
17 one of these, but there are three comments that I do just want
18 to address with respect to the city's response.

19 They note, for instance, that some of the concerns
20 with respect to our reporting was as a result of ambiguity in
21 our request that will be resolved through our court order.
22 While we certainly appreciate the clarity that a court order
23 may bring, it's certainly unworkable if the city's defense is
24 merely, every time we ask for information, it may be ambiguous.

25 I will give you example with respect to our requests

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1 for in-custody deaths. We have had a longstanding request from
2 October 2021 where the monitoring team explicitly stated the
3 following and I will just read it to you. It was also in our
4 June 8 report. It states, hold on one second as I pull it up,
5 "Notices of deaths in custody. As soon as practicable and no
6 later than 24 hours, the monitor must be advised of any death
7 in custody." there is some additional information there. "To
8 the extent that there is a question about the ambiguity of such
9 a request and that we now need a court order for it raises
10 significant concerns."

11 Second, with respect to the fact that the department
12 apparently, even if there is a 1 percent chance that something
13 is *Nuñez* related, will be consulted, I will just direct you to
14 our June 8 report with respect to a number of items of which we
15 were not consulted. Probably the most important is with
16 respect to practices related to use of force. So while I
17 certainly hope that staff are being asked to be consulted with
18 us on these matters, certainly there are items within our
19 report that raise significant concerns.

20 And finally, the monitoring team certainly appreciates
21 the complexity of the issues that are faced at the Department
22 of Correction. That cannot and does not obfuscate the
23 monitoring team's obligations to do our work under these court
24 orders. We certainly understand your orders, Judge, to be
25 quite clear; and to the extent that we have to take into

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1 account external factors when determining whether to report to
2 the Court raise significant concerns for us and are not things
3 that we anticipate considering as we move forward.

4 So that's just a few. We obviously -- in the interest
5 of time, I will defer to our significant reporting on these
6 issues of which we have outlined many great concerns. They go
7 beyond those of those five incidents. You saw an illustrative
8 example of those in the June 8 report and the June 12 report.

9 Unless, your Honor, you have any other questions, I
10 will move on to the next item on the agenda.

11 MR. SCHEINER: Your Honor, if I may?

12 THE COURT: Yes.

13 MR. SCHEINER: This is Alan Scheiner for the city.

14 Yeah, I would like to respond to something that deputy
15 monitor just mentioned in order to reiterate my remarks and
16 explain what I was referring to. The death in custody
17 reporting is not one of the requirements that the city believes
18 was ambiguous. What I was referring to, and I apologize if it
19 wasn't clear, but I said that the majority of the incidents
20 here, that is, four out of five, were not subject to any clear,
21 immediate reporting requirement. They are matters that on a
22 routine basis are reported to the monitor, but they are not
23 covered by that death in custody request.

24 We acknowledge that not reporting a death in custody
25 pursuant to that request was an error. So we are not saying

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1 that that was ambiguous. I think the monitor has acknowledged
2 that there was ambiguity with respect to what was required
3 regarding immediate reporting of the other incidents, although
4 the monitor expected immediate reporting based on a prior
5 practice, the monitor acknowledged it was not an explicit
6 requirement. So that was what I was referring to there.

7 And with respect to the use of force policy as well as
8 the -- or use of force issues, to be more broad, as well as the
9 intake policy that was mentioned before, not consulting with
10 the monitor on those were also errors. So that we are not
11 saying there were no errors and that everything is ambiguous.
12 We are saying that some of this is ambiguous and that that
13 ambiguity is being resolved by the proposed order.

14 THE COURT: Thank you, Mr. Scheiner.

15 Ms. Friedberg.

16 MS. FRIEDBERG: Your Honor, if you don't have any
17 other questions, I will move to the next topic of the agenda.
18 Are you okay with that?

19 THE COURT: Yes, please.

20 MS. FRIEDBERG: Great.

21 Your Honor, we must reiterate here, as we talk about
22 use of force, self-harm, and mortality trends, comparing them
23 from 2016 to 2021 and 2022, that since the inception of the
24 consent judgment in 2015 and discussed throughout today's
25 conference, the department continues to have high rates in each

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1 of the critical violence indicators.

2 Even with reductions in some areas, the current rates
3 of use of force, stabbings and slashings, fights and assaults
4 on --

5 (Court reporter confers)

6 THE COURT: Ms. Friedberg, we need you to speak more
7 slowly so that the court reporter can get everything down, so
8 would you start again, please?

9 MS. FRIEDBERG: No problem.

10 Your Honor, with respect to the third agenda item
11 today, which relates to use of force, self-harm, and mortality
12 trends, from 2016 and comparisons with 2021 and 2023, we must
13 reiterate at the outset that, since the inception of the
14 consent judgment in 2015, the department continues to have high
15 rates in each of the critical violence indicators.

16 Even with reductions in some areas, the current rates
17 of use of force, stabbing and slashing, fights, assaults on
18 staff, and in-custody deaths are not typical, they are not
19 expected, and they are not normal.

20 I must highlight a few key findings for you.

21 First, there are a number of different measures to
22 assess progress, and the monitoring team has dutifully examined
23 changes in metrics and patterns and staff behavior from all
24 angles in order to gain insight into the factors that must be
25 catalyzed for undercutting progress. With respect to where we

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1 are right now, use of force rates remain all too high.

2 Unnecessary and excessive use of force has not been abated.

3 The monitoring team's ongoing, contemporaneous review of all
4 use of force incidents this year, 2023, indicates that neither
5 the seriousness nor the frequency of the excessive use of force
6 has abated. This finding is present in each of the monitor's
7 reports to date which are replete with descriptions of staff's
8 pervasive, excessive, and unnecessary use of force.

9 Stabbings and slashings. The department is currently
10 projected to have nearly 350 stabbings and slashings this year.
11 This is more than the number of stabbings and slashings that
12 occurred in the combined three-year period of 2017 to 2019 when
13 the department's population was significantly higher.

14 In-custody deaths. In 2022, more people died in
15 custody or compassionately released than any other year since
16 the consent judgment was entered in 2015. In 2022, 19 people
17 died or were compassionately released.

18 Self harm. Even after the Court specifically --
19 sorry. Excuse me. Even after court orders specifically
20 related to preventing suicide were imposed, the first 18 months
21 ago in the second remedial order, seven people have died by
22 suicide or suspected suicide. Further, six of those seven died
23 by suicide or suspected suicide since the action plan was
24 entered in June 2022. I share these brief -- this brief
25 information related to these use of force trends. They will

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1 also be further explored in our July 10 report.

2 With that, I will now defer to the parties and the
3 Court to discuss these items in more detail.

4 THE COURT: Thank you.

5 I will now call on plaintiffs' class counsel.

6 MS. WERLWAS: Thank you, your Honor. Mary Lynne
7 Werlwash for the plaintiffs.

8 Your Honor, we will not spend our time recapitulating
9 the monitor's data, which is amply laid out in the Court's
10 reports but wish to make a few observations about the use of
11 force rates and trends.

12 We fully expect that the city will cite some of its
13 own data and numbers that it chooses to show improvements from
14 the atrocities of 2021, and at the outset, these recent reports
15 call into question whether these numbers are even trustworthy.
16 As the monitor has explained regarding this first incident,
17 that the catastrophic use of force in the intake search room,
18 at least as of June 8, still was not officially reported via
19 COD, that is, the department's internal initial reports. In
20 practical terms, states the monitor, this means the second use
21 of force is not included in the department's monthly use of
22 force data. That is a serious use of force incident. If that
23 use of force is missing from the official channels, what other
24 forces are missing from the data that produces these rates?
25 And we stress that these are not mere data collection errors.

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1 The entire foundation of this remedial reporting process has
2 rested on the integrity of these department processes that
3 begin with the gateway, which is the timely and accurate
4 reporting of force. The system cannot function, we cannot get
5 data, we cannot get information if such incidents are not
6 reported absent extraordinary interventions such as we have
7 seen in the last two weeks.

8 But in any event, what is clear is this: The harm to
9 the plaintiff class that the city was supposed to abate through
10 compliance with the consent decree and remedial orders has
11 deepened and worsened. On numbers alone, the use of force
12 rates are twice what they were when the city entered into the
13 consent judgment. And even more distressingly, use of force
14 has become more injurious. Incidents resulting in injuries,
15 serious injuries, are triple what are they were at the time of
16 the consent judgment. We strongly endorse the monitor's
17 prescient warning that "an unfortunate and dangerous side
18 effect of the decades long high rates is that they have become
19 normalized," and that can no longer be the case.

20 The city effectively seems to argue that the clock
21 should restart with the appointment of a new commissioner, as
22 it likely will argue every time there is a new commissioner.
23 That does not hold up to analysis in this case and on this
24 record because what we have seen is that the city is unwilling
25 or unable to disturb the causes of this constitutional crisis.

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1 It's been unwilling or unable to rein in the emergency services
2 unit and the probe teams which appear to be responsible for
3 incident one. It's been unable or unwilling to supervise its
4 line staff to ensure that they can perform the basic tasks of
5 jailing, to stay on post. It's been unable or unwilling to
6 honestly and candidly identify misuse of force when it happens.

7 We can expect numbers of incidents and data to wax and
8 wane in a facility, across different facilities. We have seen
9 that pattern time and again in this city with the same problem.
10 This is the fifth class action about the pattern and practice
11 of excessive force in the city jails, and each time use of
12 force practices improve when in the glare of the judicial
13 spotlight but then revert to this department's norm of
14 brutality when attention is focused elsewhere.

15 So, too, we see that on a smaller level in the last
16 year with some ostensible improvements in use of force rates at
17 RMBC and GRVC, two facilities that were the subject of enormous
18 monitoring attention, and we see a noticeable and distressing
19 decline at AMKC, one of the department's largest facilities and
20 the one that houses significant numbers of people with mental
21 illnesses. The goal of this lawsuit was to stop this game of
22 whack-a-mole and irradicate rampant brutality throughout the
23 department.

24 Plaintiff will just note that at this very late stage
25 in the remedial process the absolute numbers of use of force,

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1 horrific as they are, are not even the most important metric.
2 As the monitor reports, even among incidents from May, the
3 patterns of misuse of force remain entrenched—the multiple
4 security failures, staff off post, staff failure to render
5 timely aid. For there to be little material traction on these
6 areas despite the near exclusive focus on these practices
7 throughout action plan squarely tells us the action plan has
8 not worked.

9 The incidents from a few weeks ago that led to today's
10 conference do indeed present a pattern, not only a pattern of
11 death and serious injury, but they reflect the same failures
12 that were at the root of this Court's remedial orders in 2021,
13 whether that means the death by suicide in the PACE unit, which
14 is supposed to be the most intensively supervised unit in the
15 department, whether it means the rampant misuse of force by
16 probe teams such as the suited up and helmeted team that
17 apparently has paralyzed a man, or whether it means the failure
18 to intervene, such as, according to the monitor's reports, an
19 associate commissioner seeing an elderly man locked in a cage,
20 with no toilet, with his hands handcuffed behind his back and
21 he is now in the ICU.

22 Most disturbingly, perhaps, though, is fundamentally
23 we think one of the measures of the lack of progress in
24 performing this agency's culture of brutality and its
25 understanding of brutality is a word that we heard earlier

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1 today. "Inadvertently." We were stunned to hear the
2 commissioner suggest that the use of force that paralyzed this
3 man apparently in the first incident may have involved
4 inadvertent use of force, because that's a code word. This has
5 been throughout decades of litigation with this agency.
6 Reaching that conclusion about a use of force incident that is
7 still under investigation? For the head of a department to
8 suggest that intent about an incident still under investigation
9 and that looking at a video, which again we have not seen, it
10 could be explained or suggested as an inadvertent use of force
11 tells us that at the very top virtually nothing has changed.
12 It is precisely because this culture as well as these failures
13 at basic correctional practices have mortal stakes that the
14 department's fundamental inability to change its staff
15 practices, its unwillingness to interrupt labor practices that
16 deprive the jails of supervision needed cannot be countenanced.
17 Eight years after these promises were made and a historic
18 investment in the jails provided by virtue of this Court's
19 attention, we have exhausted the limits of this process.

20 I will stop now, absent questions.

21 THE COURT: Thank you, Ms. Werlwash.

22 I will turn to Mr. Powell.

23 MR. POWELL: Thank you, your Honor.

24 And we would just reiterate on that point our deep
25 concern with Commissioner Molina's and the mayor's decision to

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1 make public comments to media regarding an incident and stating
2 their opinions, even if they were preliminary, about whether
3 misconduct had occurred when there are clearly pending
4 investigations into that conduct by, it appears, more than one
5 agency. I would be remiss if we didn't also express our
6 concerns and ask the commissioner for why they thought that
7 those public statements were appropriate or necessary.

8 Very briefly addressing the use of force and the other
9 metrics, I'm not going to burden the Court with repeating the
10 various stats that the monitors report. The department will
11 undoubtedly argue that some of the violence-related measures,
12 and you have heard it today, have improved when compared to
13 certain points in 2021 when we were in the midst of the
14 pandemic and staff absenteeism rates were peaking. However, we
15 all need to be mindful regarding these data comparisons because
16 they always depend on what precise period or snapshot of time
17 you are looking at, in which particular facility you are
18 looking at. What can't be disputed is that every safety and
19 violence indicator is substantially worse now than it was when
20 the consent judgment went into effect in November 2015, and
21 that consent judgment was put into place to address the city's
22 ongoing violation of the constitutional rights of persons in
23 their custody that was occurring back then in 2015.

24 Neither the monitor nor the government are moving the
25 goal post, as I believe a DOC spokesman recently stated. We

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1 are not moving the goal post by looking at data and comparing
2 it to what it's been over the last several years or before the
3 consent judgment and keeping in mind that the jail population
4 was significantly higher back then than it is now. Instead of
5 moving the goal post, as the department contends, the city and
6 department should be held to the same constitutional standard
7 that any municipality or jail system must meet. They must take
8 reasonable measures to ensure that people in their custody do
9 not face dangerous conditions that subject them to an ongoing
10 substantial risk of serious harm.

11 I don't have anything further on this particular
12 agenda topic unless your Honor has further questions.

13 THE COURT: Thank you, Mr. Powell.

14 Mr. Scheiner and Mr. Commissioner.

15 MR. SCHEINER: This is Alan Scheiner for Corporation
16 Counsel's office.

17 I know this part of the agenda is to address the
18 statistics and I will do that, but I wanted to briefly respond
19 to some of the accusations about a specific incident, one of
20 the five that has come up recently during this conference, as
21 well as the use of easy words to throw around but I think not
22 supported by the evidence like "brutality" and "atrocities."

23 There is only one particular use of force before the
24 Court on which -- well, there are two, but the one that has
25 been mentioned frequently, it seems like people have drawn the

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1 conclusion, based on the result of that, which was tragic and
2 extremely unfortunate, result of paralysis, that the force must
3 have been excessive.

4 Obviously, the determination of whether or not a use
5 of force is excessive or even improper under regulations is not
6 determined solely by the result. It may be part of the
7 picture, yeah, you need to know, but it doesn't determine that
8 misconduct occurred. The legal standard for excessive force is
9 whether it was reasonable under the totality of the
10 circumstances, the threat of the person, and the needs of the
11 department to maintain order and safety.

12 That in most cases is a very complex question that in
13 cases that I have litigated can take years to determine whether
14 a particular use of force was proper and what effect that it
15 had. Counsel for the plaintiffs seem to have drawn ethical
16 conclusions in a very short period of time about the cause of
17 some of the conditions at issue here and they also seem to have
18 drawn conclusions about there being excessive force based
19 solely on -- without even reviewing the video of what occurred.

20 There has been no blanket statement that the
21 individuals involved in that engaged in no wrongdoing or error
22 under the department procedures and the full circumstances of
23 the force used and what exactly they did remains to be
24 determined. Video can't tell the whole story. In this case
25 even part of the incident is obscured by a privacy partition.

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1 So that it is really very, very premature to say that
2 excessive force or brutality occurred. An investigation
3 certainly is warranted. Conclusions at this time are not. And
4 that matter is under investigation.

5 So I want to turn to the metrics, the numbers. And it
6 was asserted that the department would use its own numbers, but
7 actually for the most part I am going to use the monitor's
8 numbers. And if I don't, I will certainly highlight that.

9 But the most recent metrics show that the department
10 is continuing to improve markedly over prior years in the areas
11 that are central to this proceeding, which is use of force,
12 slashing, stabbings, and deaths in custody. And I want to
13 address the allegation that all of these numbers should be
14 called into question because of some of the recent incidents,
15 and I don't think that that conclusion is warranted. Because
16 the only incident -- there is only one incident in which a COD
17 was not reported or created, you know, report to the COD, which
18 is part of the department's procedures for making sure that
19 important incidents resulting in substantial injury or death
20 are tracked. And so we acknowledge that that report should
21 have been made and that is something that's under
22 investigation. But you can't conclude from one failure to file
23 one COD that an entire reporting system is flawed and
24 inaccurate. It warrants investigation, it warrants perhaps
25 audits, certain review of records, but you can't make that

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1 conclusion that these numbers are meaningless because of one
2 single incident.

3 So what do the numbers show? They show that despite
4 the allegations of unsafe conditions, imminent harm, and
5 excessive force, and the evidence for that is not in the
6 numbers provided by the monitor in their June 8 report.

7 (Inaudible) 12.23 that's --

8 THE COURT: Mr. Scheiner, you froze for a minute, so
9 if you could go back to the beginning of the sentence that
10 includes 12.23, that would be helpful.

11 MR. SCHEINER: Sure. Thank you.

12 The systemwide rate of use of force peaked in 2021 at
13 a rate of 12.23. That is a rate based on incidents over
14 population, and it is now at a rate of 9 as of April 2023,
15 which is a 26 percent decline.

16 I also want to add there about use of force that there
17 seems to be an assumption being made or an assertion that all
18 use of force is improper, that all use of force is excessive.
19 For the reasons that I mentioned before, that's simply not a
20 valid conclusion. Some use of force is necessary for the
21 safety of persons in custody, and whether or not it is
22 excessive requires investigation of the circumstances, and
23 there are only two incidents currently before the Court where
24 that's even an issue and no evidence in the submissions other
25 than reports on what the evidence might show.

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1 So there is also data on systemwide stabbings and
2 slashings which peaked in 2022 at a rate of 0.69 and is now at
3 a rate of 0.5 as of April 2023. That is a 27.5 percent
4 decline. And this trend is even more clear if you start in mid
5 2022. The first half of that year had a rate of 0.77, but the
6 second half had a rate of 0.62, which is a 19.4 percent decline
7 just in that year.

8 The rate of systemwide fights declined from 9.28 in
9 2021 to 7.98 from 2023. That is a 14 percent decline.

10 And assaults on staff with use of force is down from a
11 rate of 1.67 in 2021 to 1 in 2023, a 40 percent decline, and
12 these were all numbers reported by the monitor.

13 In addition, assaults on staff without a use of force
14 was at a rate of 2.26 in 2021 and is down to 1.04 in 2023, a
15 53.9 percent decline.

16 I think for plaintiffs' counsel to assert that somehow
17 these figures should be ignored is unsupported.

18 Now, with respect to deaths in custody, the department
19 has a different way of counting those than the monitor because
20 the monitor lumped together in deaths in custody persons who
21 are no longer in custody, specifically, compassionate release
22 individuals, persons who were released under the compassionate
23 release policy because of severe medical conditions.

24 But even using the monitor's own way of counting
25 deaths in custody, in this year there were only three deaths in

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1 custody through June 2023. The rate in 2022 was highlighted as
2 the highest rate ever, but just as with use of force, that not
3 every use of force indicates any type of misconduct, not every
4 death in custody indicates a fault of the facility or the
5 department. Unfortunately, people in custody die for many
6 reasons.

7 In 2022, the monitor has identify the different
8 reasons. One of those deaths was characterized by the monitor
9 as accidental. Four concerned medical conditions. Six were
10 overdoses. Five were suicides. One drowned. Two were
11 undetermined due to death outside of DOC custody. So to say 19
12 people died in custody may be more or less a fact, except for
13 the two that were added who were not in custody, but it doesn't
14 really tell you anything about whether the department was at
15 fault in connection with those deaths. But we know that this
16 year the rate of deaths in custody is far reduced.

17 In the April 3 report, the monitor found that the
18 department's trends in death and custody, even counting them in
19 the way that they count them, were no different from and in
20 some years significantly better than the municipalities they
21 chose for comparison, which were L.A. County and San Diego.
22 The city had lower death in custody rates than San Diego for
23 every year—every year—from 2013 to 2022, and in some years
24 far below L.A. as well.

25 There are other statistical comparisons done by the

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1 department using the department's definition of death in
2 custody, which excludes people who are on compassionate release
3 who have been released when they are dying. But they have done
4 a comparison to other comparable municipalities and they found
5 that the city's death in custody rates for 2023 are superior to
6 the cohort systems, including L.A. County and San Diego County,
7 two of the systems, the two systems that the monitor chose for
8 comparison in the April 3, 2023 report.

9 Of course the department wants to improve all of these
10 metrics as much as does anyone in this room, but that cannot be
11 done overnight starting from the position, the unfortunate
12 position that the department was found in two years ago. Some
13 of the force, some fights and slashings and even some deaths
14 and hospitalizations are in fact an inevitable part of any
15 correctional system. There is no statistical evidence showing
16 that the department has had an increase in excessive force or
17 any worsening of unsafe conditions. That is not to normalize
18 the rates of these unfortunate events that exist now. The
19 department is committed to reducing them.

20 But to say that something is excessive requires that
21 you answer the question compared to what? Here, when compared
22 to the recent part of, there is no doubt that the metrics are
23 moving quickly in the right direction. In comparison to 2015,
24 although worth noting, it is not really apt because since that
25 time we have had rise in crime rates, rise in rates of mental

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1 illness, and the staffing problems that COVID brought and other
2 changes, and analyzing the reasons why the rates increased so
3 much between 2015 and 2021 is not possible within the confines
4 of the current record or today's conference.

5 But whatever the cause of the trends since 2015 to
6 2021, they are now moving in the opposite direction and to us
7 it makes little sense to declare a crisis or breaking point has
8 been reached just when things are starting to improve.

9 Now although the monitor says that communication has
10 declined since 2021, the hard data also shows rapid improvement
11 in outcomes since 2021. And of course we want to improve on
12 both scores. To do that, we need continued cooperation with
13 the monitor, not conflict, and the proposed order with the
14 slight modifications by the city is the best means to move
15 ahead with its continued success.

16 I can answer any questions the Court may have.

17 THE COURT: Do you have any comment in response to
18 Mr. Powell's question as to the choice of speaking to the media
19 rather than to the specifics raised in the monitor's
20 submissions to the Court?

21 MR. SCHEINER: Well, your Honor, I can speak only for
22 my own office, the law department. The monitor's submission of
23 June 8 occurred only four full days in the past, two business
24 days, two weekend days, and it is not within our earthly power
25 to respond definitively in writing to every assertion that was

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1 made in that report. It was 81 pages long.

2 With respect to comments to the press, I don't even
3 know when they were made.

4 THE COURT: Before June 8 and on June 8 I think.

5 MR. SCHEINER: Well, I will just clarify when the
6 reports came out is not necessarily when the comments were
7 made, and I do not have the facts on that, and the law
8 department was not part of that -- those statements. So I have
9 to defer to the commissioner on any questions about the public
10 statements.

11 THE COURT: Thank you.

12 Mr. Commissioner, you and the mayor made some joint
13 statements and statements along the same themes after at least
14 the initial reports came out. I would be grateful for anything
15 you would wish to share as to your reasoning there rather than
16 organizing your response to the Court or a response that dealt
17 with the scope and gravity of what at least was perceived by
18 the monitor

19 COMMISSIONER MOLINA: Thank you for question, your
20 Honor.

21 I think our response is sort of regarding the report
22 that was filed with the Court, which is public, with a need to
23 provide our preliminary point of view on the incidents that had
24 occurred and our point of view that they did not represent a
25 cascading, systemwide situation that were causing persons

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1 placed in our city's jail system at risk of harm.

2 THE COURT: And so that was a message that you wanted
3 to convey to the public?

4 COMMISSIONER MOLINA: Yes.

5 THE COURT: Thank you.

6 If you will all hold on just one second, I have to
7 check something on our timing before we go to the discussion of
8 next steps.

9 (Pause)

10 MR. SCHEINER: Your Honor, when you are ready I would
11 just like to add one more thing, when you are ready.

12 THE COURT: You might as well do that now.

13 MR. SCHEINER: I also wanted to clarify that your
14 Honor ordered us to report to the monitor rather than the
15 Court. The order was issued on May 31. The deadline was June
16 5 at noon, and we did our utmost to do that in a very unusually
17 short period of time, considering that these were five complex
18 incidents of which there are hundreds of documents relevant to
19 each one. So we did our best to report to the monitor in
20 response to questions about those five incidents within that
21 period of time, as well.

22 THE COURT: Thank you, Mr. Scheiner, and I do
23 acknowledge that, as the monitor's subsequent submissions
24 indicate, that response was made to the monitor and a great
25 deal of information was provided to the monitor.

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1 Now if you will all bear with me for a moment.

2 (Discussion off the record)

3 THE COURT: Counsel and Mr. Commissioner and those
4 observing, we are going to take just a five-minute break, and
5 so when you are done whatever you are doing in those five
6 minutes, come back and when everybody is back on camera, we
7 will proceed and people on the AT&T line don't hang up.

8 Thank you. See you in a few.

9 (Recess)

10 THE COURT: Good afternoon. This is Judge Swain. I
11 am back on the bench, and so I would ask that those who are
12 participating turn their cameras back on so that we can do a
13 quick check to see if everyone is here.

14 I think that we are all here. I see Ms. Werlwas,
15 Mr. Powell, Mr. Martin just came on, the deputy commissioner --
16 I'm sorry, the deputy monitor, the commissioner, and
17 Mr. Scheiner. And so I think we are ready to proceed now with
18 the next steps aspect.

19 So I will begin again with the monitor and the deputy
20 monitor.

21 MS. FRIEDBERG: Your Honor, I think Mr. Martin -- this
22 is Anna Friedberg. Mr. Martin is going to take this one, but I
23 did just want to respond with two comments with respect to the
24 necessary and excessive force statements that were recently
25 made by the city.

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1 The first is with respect to the status of unnecessary
2 and excessive force. As you know the monitor team has --

3 THE COURT: Slow down just a little bit, please.

4 MS. FRIEDBERG: Sure.

5 THE COURT: Thank you.

6 MS. FRIEDBERG: Sorry, your Honor.

7 The monitoring team is charged with assessing
8 compliance with respect to the use of unnecessary and excessive
9 force, so I will just reiterate my comments at the beginning of
10 this, which is that the monitoring team's findings are that the
11 unnecessary and excessive use of force in this agency have not
12 been abated.

13 The second is with respect to the timing for
14 investigations of unnecessary and excessive force. The city
15 claims that perhaps it can take upwards of years. I will just
16 remind all the parties that this consent judgment has specific
17 deadlines for investigations depending on whether their intake
18 investigations are full ID investigations. I won't go into
19 those details, but I can assure you it is not years. It should
20 be, at most, 120 days.

21 With the rest of it, I will not go into any further
22 detail but did just want to make those two clarifying points
23 for the Court.

24 And unless you have any other questions, I will leave
25 it to Mr. Martin to proceed with respect to the proposed next

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1 steps.

2 THE COURT: Thank you, Ms. Friedberg.

3 I will turn to Mr. Martin now.

4 MR. MARTIN: Thank you, your Honor.

5 Your Honor, there are a number of considerations
6 regarding next steps. We outline three today.

7 First, the monitoring team will be submitting its next
8 report to the Court on July 10, 2023. In this report, the
9 monitoring team will be making an assessment regarding the
10 progress that has occurred under the action plan in the ongoing
11 risk of harm as required by section G, paragraph (6) in the
12 action plan. This will be a critical and important evidentiary
13 finding, and my team is working hard preparing this report.

14 Second, we have recommended that certain immediate
15 steps must be taken to address the ability for myself, as the
16 monitor, and my team to fulfill our responsibilities under the
17 Nuñez court order. To that end, we respectfully request that
18 the Court enter the proposed order that the monitoring team
19 submitted to the Court yesterday on June 12. The basis for our
20 recommendations is outlined in three submissions we made to the
21 Court on June 8 and June 12.

22 As part of this relief, we also respectfully reiterate
23 our recommendation that the Court impose any other such relief
24 the Court deems just and proper to ensure that the city and
25 department abide by the Nuñez court orders to ensure that I, as

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1 the monitor, may fulfill my responsibilities under the *Nuñez*
2 court orders, and to ensure that the Court receives accurate,
3 timely, and reliable information. I want to repeat that,
4 accurate, timely, reliable information.

5 Finally, we believe the parties and the Court must
6 also consider the additional remedial relief that may be
7 necessary to that end.

8 We now defer to the parties and the Court for
9 discussion on additional next steps and remedial action to be
10 taken.

11 Thank you, your Honor.

12 THE COURT: Thank you.

13 I would, I think, first ask -- actually, I will ask
14 each of the parties to speak, and to the extent anyone wishes
15 to address the objections that have been raised to the proposed
16 order, that can be done in the context of the remarks. To the
17 extent there is a request for anything else, any other specific
18 steps to be taken at this time, that should be made clear in
19 the remarks as well.

20 And so I will turn to Ms. Werlwas.

21 MS. WERLWAS: Thank you, your Honor. Mary Lynne
22 Werlwas for the plaintiffs.

23 Your Honor, addressing the two items that you just
24 requested, first, with respect to the proposed order by the
25 monitor, as I believe the monitor represented, plaintiffs

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1 certainly consent to entry of the proposed order by the monitor
2 as the monitor submitted it. We think that the monitor has
3 well stated the necessity for the provisions that the city
4 seeks to strike out, and we do not think that those are
5 certainly not merely ministerial or housekeeping edits on the
6 city's part but, rather, are material changes in an order that
7 is meant to underscore and, in our view, not to create new
8 obligations but to underscore existing obligations that have
9 not been honored in the department, and therefore we would ask
10 the Court to enter the monitor's proposed order as the monitor
11 submitted it.

12 That said, that order alone in our view is not
13 sufficient to address the harm to the plaintiff class or,
14 frankly, in our view, to materially alter the course of
15 conduct. Even if -- while we also agreed of course that
16 appointment of a *Nuñez* manager is an important step to breaking
17 many of the logjams that have resulted in today's hearings and
18 to this profound crisis and lack of trust in this process, a
19 *Nuñez* manager alone does not change the facts on the ground,
20 does not change the staff practices, does not provide the
21 leadership that is necessary and that is profoundly lacking.
22 So as noted, it is, in other words, a welcome but ultimately
23 small move forward.

24 THE COURT: Ms. Werlwais, could you hold on one second?
25 I see that we lost the picture of the deputy monitor. I am

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1 asking my courtroom deputy whether she can -- oh, the deputy
2 monitor is back. Okay. I just wanted to make sure we hadn't
3 lost you, Ms. Friedberg.

4 MS. FRIEDBERG: Your Honor, my wifi is a little bit
5 unsteady so when I am not speaking I have just been putting my
6 camera off so that I can ensure I can hear the feed well, if
7 that's okay with you.

8 THE COURT: That's fine. I just wanted to be sure we
9 hadn't lost you altogether.

10 My apologies for interrupting you, Ms. Werlwash. You
11 may continue.

12 MS. WERLWAS: Thank you.

13 So what -- in terms of what specific next steps must
14 happen, we are summarizing here, but we think it is very clear
15 that the next steps that have to happen in this case have to be
16 steps that will change these eight years of failed efforts. We
17 cannot simply continue down the same path expecting different
18 results. And what, in our view, as is no surprise, as we have
19 told the Court, it requires at this point is that the Court
20 should now begin the proceedings to lead to appointment of a
21 receiver to undertake the actions necessary to bring the
22 department into compliance with this Court's orders in this
23 matter.

24 As a threshold step, certainly the Court and the
25 parties have thoughts on how that process could be most

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1 efficiently done given the posture of this case. The Court
2 undoubtedly has views on the proper procedure and, given the
3 fact that much of the evidence in support of such an
4 application is already before the Court in the form of the
5 monitoring reports, we would welcome such guidance. That said,
6 we do have our own proposals for the procedures by which this
7 should move forward and that we are happy to discuss.

8 As for timing, while we believe the record before the
9 Court and right now fully demonstrates that the action plan has
10 failed as have the myriad of plans, initiatives, and programs
11 that preceded it, and indeed as have the preceding class
12 actions that for decades have tried to solve this problem, and
13 we think the record will show why a receiver is necessary to
14 bring relief to the plaintiff class, we are mindful that the
15 monitor is filing this report on July 10, that there is an
16 existing process under way, and in that report that the monitor
17 is tasked with its formal assessment of compliance with the
18 action plan and other court orders. So we think that in order
19 to avoid a piecemeal presentation to the Court of the state of
20 the record and honoring other stakeholders' wishes, we propose
21 that the monitor file its report on July 10 and within two
22 weeks the plaintiffs file motion papers addressing the relief
23 that we seek, including receivership, and that a motion
24 schedule then follow. We propose the city's reply due promptly
25 within 30 days, our reply in two weeks, but those further

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1 details, again, about the process, your Honor, while we have
2 our proposals, we would welcome a discussion with the Court.

3 But to make clear, where we are now is we believe the
4 record at this point mandates moving forward with the relief
5 that we think is necessary in this case to provide relief and
6 that no lesser relief will provide relief to the plaintiff
7 class.

8 THE COURT: Thank you.

9 I will hear from Mr. Powell.

10 MR. POWELL: Thank you, your Honor.

11 First, with respect to the proposed order submitted by
12 the monitor and attached to his report filed yesterday, as we
13 said, we fully support the entry of the filing that -- of the
14 filing of that order in the form that it was submitted by the
15 monitor. It appears very clear from today that there is a
16 fundamental difference in view between the city and the monitor
17 about the extent of transparency and the current working
18 relationship. The monitor has expressed severe concerns in
19 numerous submissions about a deterioration in transparency of
20 the city and the department and a failure to provide timely and
21 accurate information to him. The mayor has expressed -- made
22 some public statements that certainly could be read to question
23 the credibility of the monitor. And when we sit here today,
24 the city and Commissioner Molina are explaining a very
25 different picture, that they are fully cooperative, fully

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1 partnering, and doing their best to provide information
2 whenever requested.

3 I can't opine or provide information on which
4 perspective is correct, but it is very, very concerning that
5 the monitor, who is an agent of the Court, is concerned about
6 his ability to carry out his functions here and his ability, in
7 essence, to trust the information that he is getting from the
8 city.

9 As to the order, I can address the three proposed
10 changes the city has made and why we oppose them if you would
11 like. Would that be helpful to your Honor or would you like to
12 hear from the city on those three changes first?

13 THE COURT: I think, in fairness to the city, your
14 specific response in opposition would be helpful. The monitor
15 has already done that in writing, so I would ask you to speak
16 to your response to the objections now before I call on the
17 city.

18 MR. POWELL: Sure.

19 Very briefly, I think there are three substantive
20 changes proposed by the city.

21 The first was the leading language requiring the
22 monitor to approve the selection of the individual to serve as
23 a *Nuñez* manager. I think that -- I don't think the monitor has
24 any objections with the person who has been chosen to at least
25 initially serve in that capacity, but the monitor is the one

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1 who is going to be dealing regularly with this person and this
2 person is going to be the point of contact for the monitor, so
3 we think it is a very reasonable position to allow the monitor
4 to at least approve whoever may hold that position.

5 Second, there was a change to the description of the
6 responsibilities of the Nuñez manager, and this was all in what
7 was in paragraph 7 of the proposed order, your Honor. The city
8 has deleted language limiting the monitor's -- Nuñez manager's
9 responsibilities to those covered by the Nuñez court orders.
10 The city has proposed that they just include those
11 responsibilities, leaving open the possibility that this
12 individual may have many other responsibilities not related to
13 the broad court orders in this case. We think that defeats the
14 purpose of what the monitor is seeking here. I think he
15 certainly can speak for himself, but I think in his submissions
16 he has indicated he needs someone who is explicitly devoted to
17 focusing on the myriad of issues in the Nuñez court orders. If
18 this person is distracted by other responsibilities—we are
19 just talking one person here—we think it could undermine the
20 function that the monitor thinks necessary here.

21 Finally, the city has deleted what was paragraph 1 of
22 the proposed order which in essence requires the department to
23 send out communication to their staff, which they regularly do.
24 In this case it would reiterate the obligations of staff to be
25 candid, transparent, forthright, and accurate when

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1 communicating with the monitor. We do not see any harm in
2 doing that given the issues that the monitor has raised.

3 Communications go out to staff all the time. Given the record
4 and the monitor's concerns with the accuracy of the information
5 he's been receiving, we think there is no harm in reminding
6 staff of their obligations to be candid and forthright with the
7 monitor.

8 I do want to note that my, just, responses to the
9 points made by city, I do want to very briefly address the
10 city's views as to -- the government's views as to next steps,
11 your Honor.

12 THE COURT: Yes.

13 MR. POWELL: Based on the most recent reports filed by
14 the monitor and our ongoing discussions with the team which are
15 very, very frequent, the government has grave doubts about the
16 ability of this administration and the department's current
17 leadership to implement the reforms and changes that are
18 necessary to bring the city into compliance with the 2015
19 consent judgment and four subsequent orders entered by this
20 Court since August 2020.

21 As the Court is aware, the action plan approved by
22 your Honor on June 14, 2022, represented what the monitor
23 referred to as a road map, and I'm quoting, "road map for
24 addressing the foundational deficiencies that inhibit the
25 department's ability to build sustainable reforms." That's

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1 Docket No. 462.

2 The action plan was developed with significant input
3 from the department. The plan was designed to keep the primary
4 goal of the consent judgment and prior court orders to
5 substantially reduce the level of violence and the ongoing harm
6 being suffered by people detained in the city's jails and the
7 staff who work there.

8 Now, almost half a year -- almost a year and a half
9 after Commissioner Molina's appointment and a year after the
10 action plan was finalized, the constitutional rights of people
11 in the city jails continue to be violated on a daily basis, the
12 staff continues to be injured on a regular basis due to the
13 high level of violence in these facilities. The monitor's June
14 8 report includes "the people in custody, as well as DOC staff,
15 continue to face a pervasive, imminent risk of harm," quoting
16 page 5 of that report.

17 Based on his analysis of the data and review of staff
18 practices, the monitor further finds that the department
19 continues to fall far short of their requirement to materially
20 improve upon the level of safety and the rate at which force is
21 used in the jails and the amount of unnecessary and excessive
22 force which remains far too prevalent. These findings are, of
23 course, consistent with the conclusions that the monitor has
24 repeatedly made in prior reports submitted to the Court since
25 the action plan was entered.

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1 Moreover, as outlined in the monitor's previous three
2 reports, including the 200-plus page report filed on April 3,
3 the city and department continued to be in clear noncompliance
4 with core provisions of the consent judgment and your Honor's
5 subsequent orders, including the requirement to implement and
6 follow through in the department's own use of force policy and
7 requirements to conduct thorough, timely, and objective
8 investigations of use of force incidents.

9 We were hopeful that the city's commitment to revamp
10 the department's leadership structure, to bring in outside
11 corrections experts, and to work in close consultation with the
12 monitor and his subject matter experts could potentially avert
13 the need for more intrusive relief. We are now concerned that
14 that may not be the case.

15 As the monitor has referenced and as the Court is
16 aware, the monitor will be filing his final report under the
17 action plan on July 10. Pursuant to paragraph G(6) of that
18 plan, the report must include the monitor's assessment, a
19 two-pronged assessment, one, as to whether the city and
20 department have made substantial and demonstrable progress in
21 implementing the reforms, initiatives, plans, systems, and
22 practices outlined in the action plan; and, two, whether such
23 efforts that resulted in a substantial reduction in the risk of
24 harm currently facing people in custody and DOC staff.

25 The government will carefully review the monitor's

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1 July 10 report, including the monitor's determinations with
2 respect to these two questions and the basis for those
3 determinations. We will then advise the Court regarding our
4 views on next steps, including whether we will ask your Honor
5 and join in Legal Aid's anticipated application to appoint an
6 outside receiver with independent authority to take all
7 necessary actions, bringing the city and department into
8 compliance with the consent judgment and remedial orders
9 entered in this case, or whether we would seek other forms of
10 extraordinary court relief.

11 Thank you, your Honor.

12 THE COURT: Thank you, Mr. Powell.

13 Now Mr. Scheiner and the commissioner.

14 MR. SCHEINER: Hi. This is Alan Scheiner for the city
15 of New York and the department.

16 I want to address first something that was said
17 recently that I think -- well, I think I was misquoted to
18 suggest that the city did not intend to comply with the
19 timeliness requirements for investigations and disciplinary
20 actions. What I was referring to earlier as taking years is
21 not investigations, but litigations, to point out simply that
22 these are complex legal questions if the question is did
23 somebody violate the Constitution in using force. The city
24 acknowledges the requirements for it to investigate and
25 discipline people for excessive force, and I don't think

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1 there's been anything in the current record to show that
2 currently the city is deficient in that regard.

3 I also want to point out something that was said
4 earlier which highlights the difficulty in coming to quick
5 conclusions about what specific and recent incidents mean
6 because plaintiffs' counsel claimed that the individual in
7 incident five was in the ICU. That is not true. They are not
8 in the ICU. They are in city custody and in a city facility.
9 And they also asserted that, on the basis of I don't know what,
10 that the person was in the hospital to begin with because of
11 some excessive force. That is a medical question. I won't get
12 into the details because it's confidential and also because it
13 would be premature, especially as no medical experts have been
14 consulted.

15 But I want to get now to the issue of remedies and
16 first address the assertion that the Court should set a
17 schedule for briefing on the appointment of a receiver. We
18 believe that would be extremely premature to do that before
19 having the monitor's report on July 10, and we look forward to
20 that report. So we ask the Court to simply defer that question
21 of briefing schedule on a receiver, whether it is warranted at
22 all, and, if so, what the pace should be until then.

23 But I do want to note, however, something about the
24 significance of that request for receiver because I'm not sure
25 that the way it's been presented appreciates it. The mayor of

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1 the city of New York, of course, is elected democratically and
2 the mayor has delegated to the commissioner the responsibility
3 of the city government to administer the Department of
4 Correction, and that department does what it does under
5 obligations under state law and obligations to other
6 governmental entities. What the appointment of a receiver
7 means is that control over all of that, as well as the fiscal
8 expenditures associated with it, as well as the liabilities
9 associated with it, control of everything would be taken away
10 from the voters and taxpayers of the city of New York and put
11 in the hands of somebody who is appointed by the Court but is
12 not accountable to the people of the city of New York and --
13 unless there was -- it would present burdens on the city of New
14 York—liability and fiscal—that result in decisions by
15 somebody not accountable democratically.

16 So I think that although that step has been taken in
17 other cases, it is a very, very big step. It is a very, very
18 undemocratic step. We believe it is a very, very complex
19 question about whether or not the standard for receiver has
20 been met, and so to suggest that that issue should be briefed
21 in the minimum amount of time for a motion under the Federal
22 Rules of Civil Procedure, 30 days, suggests a rather flippant
23 attitudes toward the weight of that question.

24 But I will turn now to the proposed order because the
25 city agrees with all of the provisions in the monitor's

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1 proposed order. We also want clear reporting requirements,
2 we want a clarified process for the review of policy changes,
3 and we want a *Nuñez* manager dedicated to ensuring that the
4 department manages and addresses all of the items required by
5 the consent judgment and subsequent orders in this case and
6 requests for information from the monitor. And we are grateful
7 that the monitor took into account most of the city's concerns
8 in advising the Court.

9 But I want to address the few areas of disagreement.
10 They concern the commissioner's retention of four elements of
11 his management authority—communication and control of the
12 staffing. The commissioner needs to be able to communicate
13 with his staff as needed, when needed, and in the manner
14 needed. Correctional work is challenging and dangerous. The
15 commissioner's relationship with his staff is of paramount
16 importance to morale and motivation. The monitor's proposal
17 would allow the monitor to dictate precisely what can be said
18 by the commissioner in a manner that is not needed. The
19 commissioner has consistently encouraged cooperation with the
20 monitor and will continue to do so and will address with staff
21 the monitor's recent concerns. But to allow the monitor to
22 dictate how and when that is said would impair the
23 commissioner's ability to manage the department.

24 Regarding the *Nuñez* manager, the commissioner should
25 also be permitted to choose the people who work at the

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1 department. That is an authority inherent in and necessary to
2 management of this vital function. The mayor elected by the
3 people of the city of New York -- the mayor was elected, as I
4 noted before, and delegated his authority to the commissioner,
5 and there is no evidence that the commissioner would use that
6 authority over hiring or assignment of department employees to
7 interfere with the monitor's work. The monitor acknowledges
8 that the department's choice of a *Nuñez* manager is highly
9 qualified. If changes are made in the future, the department
10 will seriously consider the need with the monitor. And if the
11 monitor believes that the *Nuñez* manager, whoever that may be at
12 that time, is interfering with the goals of this proceeding,
13 then the city will consult with the monitor about that and, if
14 necessary, the issue can be brought to the Court.

15 The same is true of the change in the *Nuñez* manager's
16 responsibilities. The department intends for the *Nuñez* manager
17 to attend to their *Nuñez* role on a full-time basis and has no
18 plans to alter that. The city only asks that the commissioner
19 retain the discretion to assign other duties to that person, if
20 necessary, under future circumstances that cannot be predicted,
21 if that is consistent with the *Nuñez* manager's role. The city
22 will seriously consider the monitor's advice should this ever
23 present problems and, as always, disputes can be brought up
24 with the Court.

25 The city looks forward to moving forward with the

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1 procedures in the monitor's proposed order with the slight
2 modifications requested, and we will try to address any
3 questions from the Court.

4 Thank you.

5 THE COURT: Thank you.

6 I will now hear the monitor's further response, if
7 any, to the objections to the provisions in the proposed order.

8 MS. FRIEDBERG: Your Honor, this is Anna Friedberg,
9 the deputy monitor.

10 We have nothing to add beyond our submission
11 yesterday, and the city's additional information now doesn't
12 change our position.

13 THE COURT: Thank you.

14 I just ask that everybody be patient with me for a
15 couple of minutes while I reflect on what I have heard, and
16 then I will make my rulings on the issues that have been
17 raised.

18 (Pause)

19 THE COURT: I do just want to make one thing clear.
20 Ms. Friedberg, the proposed order also includes a date shift
21 that would defer until the end of the year the next overall
22 compliance report, is that correct?

23 MS. FRIEDBERG: Your Honor, actually no. The
24 provision -- I assume what you are referring to is section 2 of
25 the proposed order related to the monitoring team's compliance

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1 assessment for the action plan and select provisions of the
2 consent judgment and remedial orders. Am I correct that we are
3 discussing the same provision?

4 THE COURT: I, frankly, was working from memory of
5 discussions, so section Roman II, not Arabic 2, yes.

6 MS. FRIEDBERG: Okay. I am happy to provide some
7 clarification with respect to that provision. What that
8 provision relates to is what the monitor -- the monitoring team
9 has a report due July 10. That does not change. However,
10 under the consent judgment, so a different order, the monitor
11 must provide biannual reporting on certain compliance ratings.
12 The provision -- sorry this is a little confusing. The
13 provision with respect to II would permit the full biannual
14 report --

15 THE COURT: I'm sorry. The provision that I am
16 thinking of is in III, which is modification of section G
17 paragraph (5)(b) of the action plan suspending certain
18 compliance ratings and such through June 30. So is that what
19 you were discussing right now?

20 MS. FRIEDBERG: Your Honor, I'm sorry. I didn't mean
21 to interject my own confusion by referencing Roman numeral. . .

22 THE COURT: Now you have frozen. I don't know if you
23 can hear us.

24 MS. FRIEDBERG: I can hear you. Can you hear me?

25 THE COURT: Now I can hear you, yes.

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1 MS. FRIEDBERG: I am going to turn my camera off, if
2 you don't mind, and maybe that will make sure that the audio
3 feed is better.

4 THE COURT: That would be fine. Thank you.

5 MS. FRIEDBERG: So, your Honor. I will start again.

6 With respect to the provision related in III, which is
7 a modification to section G, paragraph 5, under the action
8 plan, what we are simply relating to is certain compliance
9 ratings the monitoring team is obligated to provide biannually.
10 So this will not impact the July 10 report. However, it will
11 impact what we report out in the fall of 2023. We seek
12 modification at this juncture because it will impact the work
13 that we need to do over the next few months in order to assess
14 compliance.

15 In practical terms, what it means is that our fall
16 report will look very similar to the report that you were --
17 that you received on April 3 that provides an update on every
18 section of the action plan as well as compliance ratings
19 related to the select group of consent judgment provisions and
20 remedial order provisions rather than a compliance rating for
21 every provision in every four of the court orders to date or
22 five court orders to date. So given our seven -- or six or
23 seven reports already for this first six-month period of the
24 year, we thought it would be appropriate to continue with our
25 focus on that with respect to compliance for our fall 2023

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1 report.

2 THE COURT: Thank you. I have not heard of or
3 received any objections to that provision, but I wanted to make
4 clear, especially for our public and press listeners, that if I
5 enter this order, there will also be that change in the
6 content, really, more than the timing of the fall report.

7 So give me just a couple of moments again.

8 (Pause)

9 THE COURT: Thank you for your patience.

10 I will approve and enter the proposed order, which is
11 substantially consensual. I find that it is unfortunately
12 necessary to clarify and, again, underscore the
13 responsibilities that have been imposed by orders that have
14 been in place for years and more recent orders. But to the
15 extent there are any ambiguities and to the extent that
16 specifics of timing and execution of methodology of
17 responsibilities is necessary to make sure that we are all
18 clear, it is appropriate and it is necessary.

19 I also find that it has been established sufficiently,
20 and the city has agreed, that there is a need for a
21 Nuñez-specific manager. The city has objected to three -- just
22 one minute, really two provisions of the order, but related
23 provisions. No, I guess it is three. So as to the Nuñez
24 manager, there are objections to the specification of the scope
25 of the duties of the Nuñez manager and specifically to the

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1 requirement in this proposed order that the *Nuñez* manager's
2 duties be exclusive to *Nuñez* compliance. The city and the
3 department have represented on the record that that is the
4 commissioner's expectation at this point, but that there might
5 be circumstances in the future that would lead the commissioner
6 to believe that other duties should be assigned and they have
7 proffered that the city would consult with the monitor for the
8 monitor's input in connection with consideration of any such
9 change. I am overruling that objection and rejecting that
10 proposal. The communication and compliance issues, not only
11 with respect to these five incidents, but that have arisen over
12 the years under this and prior administrations and that have
13 manifested themselves over the past few months, make it clear
14 to the Court that an exclusively focused *Nuñez* manager is
15 necessary to coordinate communications while not in any way
16 compromising the monitor's ability to gather information from
17 and within the Department of Correction through the *Nuñez*
18 manager, from the *Nuñez* manager, and also from any others as
19 the monitor determines may be necessary to carry out the
20 monitor's duties.

21 So as with all court orders, on a showing of good
22 cause, the Court will consider a request in the future from the
23 city and the department to add or to give the commissioner the
24 ability to add other duties to the *Nuñez* manager without
25 compromising the function for which the *Nuñez* manager is being

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1 appointed now, but the provision of the proposed order
2 requiring exclusive dedication of the *Nuñez* manager to *Nuñez*
3 compliance will remain.

4 As to the communications, there are, as I understand,
5 there are two objections, but I may be incorrect. I certainly
6 understand that there is an objection to paragraph 1(a) which
7 gives the substance of communication to be delivered to all
8 staff and leadership and the precise wording of the
9 communication is required to be approved by the monitor, and
10 there is an objection to that as improperly invasive of the
11 commissioner's ability to communicate with staff. This
12 particular communication is specific to the delivery of
13 information in connection with the monitor's ability to be able
14 to perform the monitor's Court-imposed responsibilities under
15 these court orders, and it is important to the Court that the
16 monitor be comfortable that the statement is sufficiently
17 specific, strong, and uniform and delivered in the way that is
18 contemplated by this order, that this provision will remain and
19 the city's objection to inclusion of the requirement in
20 paragraph 1(a) is overruled. That was the
21 communication-specific objection.

22 And the third objection is to the provision of the
23 order that requires the approval of the monitor of any future
24 appointment to the *Nuñez* manager position. That objection is
25 also overruled. The Court recognizes the commissioner's duty

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1 and responsibility and authority to determine the
2 qualifications of a *Nuñez* manager. This provision does not
3 impede the commissioner's responsibilities or duty or authority
4 to determine who may be qualified to serve in that post. What
5 it does do is ensure that if the monitor believes that the
6 person is not someone with whom the monitor will be able to
7 work effectively in performing the monitor's responsibilities
8 to the Court, and thereby to the public under the *Nuñez* orders,
9 the monitor does not have to be put in a wait-and-see position
10 about that. And so it is appropriate, it is practical, and it
11 is consistent with the purpose and spirit of these orders in
12 this case to have the monitor approval requirement in
13 connection with future appointments to this very essential and
14 very important function that is designed to address fundamental
15 difficulties that the monitor has experienced and cataloged at
16 some length in being able to be confident of both the
17 availability and the accuracy of information that is provided
18 to the monitor.

19 And so the three objections to the order are
20 overruled. The copyrighting, or not copyright in the sense of
21 protection of information, but the typographical or wording
22 error that was identified by the city will be corrected in the
23 version of the order that I sign, and so I will enter that
24 order.

25 As to the request for permission to commence

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receivership motion practice, I think everyone recognizes here—and the Court certainly does—that receivership would be an extraordinary step here. The Court has obviously yet to determine, since motion practice hasn't even begun, whether it will be appropriate and necessary here.

The Court's willingness to work with the parties and to require the parties to engage in good faith in working with the city and the department and in supporting and facilitating the department's good faith and what the Court hoped would be vigorous undertakings to both effectuate and speed up the process of reform have been premised on the Court's expectation that it would be able to be entirely confident of the dedication and candor of the department and city leadership with respect to information regarding these fundamental safety issues, structure issues, and management issues in the jails, and particularly Rikers. The mayor has delegated to the commissioner, and the mayor, as the elected leader of this city, has overall responsibilities that go to the very safety of the lives of people who are in custody pending determination and disposition of criminal charges, people who do not have the choice to be there, and for years now there has been a situation that is, in the monitor or the deputy monitor's words, not normal and not acceptable. That has to change.

My confidence in the commitment of the city leadership to be all in on in recognizing that need and in working with

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1 the monitoring structure that the Court has imposed in good
2 faith and in all candor has been shaken by the incidents of the
3 past few weeks as detailed in the letters and by the way in
4 which the leadership has approached seeking to shape public
5 opinion and public perception of these very serious issues that
6 have been raised by the monitor.

7 And so while I am not ready to authorize or structure
8 receivership motion practice which would bring its own very
9 serious set of procedural and substantive questions and
10 questions as to the ability of another person or team to truly
11 achieve the aims of this process in which we have been engaged
12 for so long, I am willing to let the parties explore further
13 and seek to concretize the nature of any receivership motion
14 practice proposal and the set of issues that it would
15 implicate.

16 Therefore, following the July 10 report of the
17 monitoring team and in advance of the August 10 conference that
18 is scheduled, should the plaintiffs seek to pursue a request
19 for authorization to commence receivership motion practice, the
20 plaintiffs must meet and confer with the other stakeholders,
21 namely, the city and its leadership, the United States
22 Attorney's Office for the Southern District of New York, and
23 the monitoring team, which is a monitoring team and not a
24 stakeholder in the traditional sense, but clearly central to
25 the informational flow and evaluative function that has been

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1 put in place here, regarding the potential structure and timing
2 of any receivership motion practice or motion practice seeking
3 some other type of relief. And for the consideration of that
4 proposal in connection with the August 10 conference, a joint
5 report of the parties' proposals and positions must be filed on
6 the docket by August 3. The Court will consider that
7 submission and it can be discussed at the August 10 upcoming
8 conference in this case.

9 Are there any questions about the Court's rulings?

10 Is there --

11 MS. FRIEDBERG: Your Honor?

12 THE COURT: Yes, Ms. Friedberg.

13 MS. FRIEDBERG: This is Anna Friedberg, deputy
14 monitor.

15 I have a logistical question for you with respect to
16 the ordering of the city to provide a transcript of today's
17 hearing, and just respectfully request that such an order be
18 made and provided to the Court and the monitoring team.

19 THE COURT: Yes. The Court -- thank you for reminding
20 me.

21 The Court directs the city to order the transcript of
22 this proceeding and orders that it be provided by Friday and
23 that copies be provided by the court reporter to the monitoring
24 team and to the Court. So that is Friday of this week, which
25 is the 16th of June, and I am just going to ask the court

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1 reporter to indicate whether that is feasible.

2 (Court and court reporter confer)

3 THE COURT: And she has confirmed that that is
4 feasible.

5 Thank you, again, for reminding me, Ms. Friedberg.

6 Is there anything else that we need to discuss
7 together in this conference?

8 Seeing nothing, I thank you all very much.

9 MR. POWELL: Judge? Your Honor?

10 THE COURT: Yes, Mr. Powell.

11 MR. POWELL: Sorry to jump in, but I was conferring
12 with Ms. Eshkenazi. Due to prescheduled commitment, it may be
13 difficult for us to meet and confer and meet that August 3
14 deadline. Would it be possible to move that to a little closer
15 to the conference? I don't have a calendar in front of me.

16 THE COURT: August 3 is the week before. So what are
17 you thinking about?

18 (Counsel confer)

19 THE COURT: August 10 is a Thursday. So August 3
20 would be a Thursday.

21 MR. POWELL: Is there any way to have -- yeah, is
22 there any way to have it be August 7 or 8? Just that prior
23 week is the week where our availability is limited. We
24 certainly can participate in calls, but to make a written
25 submission, we understand that it needs to be well in advance

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1 of your Honor's conference, but would August 7 be possible?

2 THE COURT: August 7, by Tuesday afternoon.

3 MR. POWELL: Okay. Thank you.

4 THE COURT: Thank you.

5 And so we are now adjourned. Thank you. Stay safe
6 and be well, everyone.

7 COUNSEL: Thank you, your Honor.

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